RECORD, CASE No. 14,124.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 409.

THE PENNSYLVANIA COMPANY, PLAINTIFF IN ERROR,

vs.

BALES M. CAMPBELL, ADMINISTRATOR OF THE ESTATE OF WILLIAM TEEHEN, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Transcript from State court	1	1
Docket entries	1	1
Order for continuance and granting leave to file amended petition	2	2
Order for continuance and granting leave to file amended petition	3	2
Order for continuance	3	2
Order granting leave to plaintiff to take depositions	3	2
Order passing cause	4	2
Order for continuance	4	2
Order for removal	4	3
Petition	5	3
Summons and return	9	5
Motion to make more definite and certain	10	5
Amended petition	11	6
Answer to amended petition	15	9
Motion to strike depositions from the files	16	9
Affidavit of Rush Taggart	17	9

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 28, 1892.

	Original.	Print
Petition for removal	18	10
Bond for removal	20	11
Clerk's certificate	22	12
Order beginning trial	23	13
Order continuing trial	24	13
Order concluding trial	24	13
Verdict	25	14
Motion for new trial	25	14
Order continuing motion for new trial	26	15
Judgment	27	15
Bill of exceptions	28	15
Evidence for plaintiff	28	16
Testimony of Catherine Teehen	28	16
Deposition of Findley Barber	33	18
C. C. Douglass	35	19
John T. Alexander	40	22
Dr. J. H. Tressel	45	24
James L. Davis	46	25
Alexander Fraser	51	28
Testimony of Mrs. Ellen Quinn	54	29
Mrs. Alice Castleton	59	32
Josephine Madden	64	35
Dennis Quinlan	68	37
James Clark	71	38
—— Van Wermer	76	41
Evidence for defendant	87	47
Agreed statement of the testimony of Conductor Stager	87	47
Testimony of William Reck	88	48
William Megarge	110	59
W. A. Routson	122	66
Dennis Charleton	134	73
Nathaniel Harrington	141	77
Defendant's requests to charge	152	83
Charge of the court	157	85
Exceptions to charge	166	90
Judge's certificate to bill of exceptions	168	90
Writ of error	169	91
Return to writ	170	92
Bond	170½	92
Citation	172	93
Proof of service of citation	173	93
Clerk's certificate	174	93

1 Be it remembered that heretofore, to wit, on the 7th day of February, 1890, a transcript was filed in this cause, and which said transcript is in the words and figures following, to wit:

Docket Entries.

Appearance Docket No. 8, page 12334.

Court of Common Pleas, Mahoning County, Ohio.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen, *vs.* PENNSYLVANIA COMPANY. } (103.) 1882. Anderson and Woolf and Jones & Murray.

Civil action. Amount claimed, $10,000.

July 28, 1882.—Petition and precipe filed.

July 28.—Summons issued.

Aug. 7.—Summons returned, endorsed thus: Received this writ July 28th, A. D. 1882, and pursuant to its command on the 4th day of August, A. D. 1882, I notified E. H. Hosmer, agent of the within-named def't, The Pennsylvania Company, by delivering to him a true and certified copy thereof, with endorsements thereon, after having failed to find the president, vice-president, secretary, treasurer, chairman of board of directors, or any other managing officer or agent of said def't within my county. Fees, $1.32. George W. Lodwick, sheriff, by E. B. Walker, deputy sheriff.

Aug. 15.—Motion to petition filed, Sept. T., 1882.

Nov. 4.—Continued, with leave to amend petition by Dec. 10. J. 24, p. 100.

Dec. 16.—Leave to amend petition 30 days from term and continued. J. 24, p. 181.

2 Jan. term, 1883.—Continued.

April term, 1883.—Continued.

Sept. term, 1883.—Continued.

1884, March 1 (Jan. term).—Amended petition filed and continued.

April 5.—Answer filed.

June 21 (May term).—Con. by consent. J. 26, p. 390.

Sept. 9 (Sept. term).—Deposition on behalf of pl'ff filed.

Sept. 9.—Leave to pl'ff to take depositions by Oct. 1. J. 27, p. 14.

Sept. 29.—Deposition on behalf of pl'ff filed.

Nov. 10.—Passed at cost of def't. J. 27, p. 166.

Dec. 3.—Motion filed to pl'ff's depositions filed.

Dec. 3.—Con. at pl'ff's cost. J. 27, p. 263.

1885, Jan. 2.—Depositions on behalf of pl'ff filed, $10.41.

Jan. 24 (Jan. term).—Petition and bond for removal to U. S. circuit court filed.

Jan. 26.—Removal to U. S. circuit court for N. dist. Ohio. J. 27, p. 416.

Journal Entries.

J. 24, p. 100.

BALES M. CAMPBELL, Adm'r of Wm. Teehen,
vs.
PENNSYLVANIA COMPANY.
} 12334, 418. Civil Action.

3 This cause is continued by consent, with leave to plaintiff to file amended petition by the 10th day of December, 1882.

BALES M. CAMPBELL, Adm'r of Wm. Teehen,
vs.
PENNSYLVANIA COMPANY.
} 12334, 418. J. 24, p. 181. Civil Action.

The plaintiff herein has leave to file his amended petition 30 days after term, and this cause is continued.

BALES M. CAMPBELL, Adm'r of Teehen, Dec'd,
vs.
PENNSYLVANIA COMPANY.
} 12334, 101. J. 26, p. 390. Civil Action.

This cause is continued by consent of parties.

BALES M. CAMPBELL, Adm'r of Wm. Teehen, Dec'd,
vs.
PENNSYLVANIA COMPANY.
} 12334, 83. J. 27, p. 14. Civil Action.

The plaintiff herein is allowed to take depositions by the 1st day of October on giving proper notice as required by law.

4 BALES M. CAMPBELL, Adm'r — Wm. Teehen, Dec'd,
vs.
PENNSYLVANIA COMPANY.
} 12334, 83. J. 27, p. 166. Civil Action.

This cause, having been regularly assigned for trial, is passed on motion of the defendant and for good cause shown; it is therefore ordered that said defendant pay the costs of such passing.

BALES M. CAMPBELL, Adm'r of Wm. Teehen, Dec'd,
vs.
PENNSYLVANIA COMPANY.
} 12334, 83. J. 27, p. 263. Civil Action.

On motion of plaintiff and for good cause shown, this cause is continued, and it is ordered that said plaintiff pay the costs of such continuance.

BALES M. CAMPBELL, Administrator of the Estate of Wm. Teehen, Deceased,
vs.
PENNSYLVANIA COMPANY.
} 12334, 58. J. 27. p. 416. Civil Action.

The defendant herein having, within the time provided by law, filed its petition for the removal of this case to the circuit court of the United States, and having at the same time offered good
5 and sufficient surety, pursuant to statute, therefore the court, finding that the defendant is a resident of the State of Pennsylvania, and that it is entitled to such removal, do hereby accept said petition and bond, and order that said cause be removed for trial into the next circuit court of the United States for the northern district of Ohio, pursuant to the statute of the United States; and all further proceedings in this court in said cause are hereby stayed.

THE STATE OF OHIO, *Mahoning County,* } *ss:*

In the Court of Common Pleas.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen,
vs.
PENNSYLVANIA COMPANY.
} Petition.

The plaintiff, Bales M. Ca-pbell, says that he is the duly appointed and qualified administrator of the estate of William Teehen, deceased, and was so appointed and *and* qualified by the orphans' court of Allegheny county, Pennsylvania, and also by the probate court of Mahoning county aforesaid as ancillary thereto; that the defendant, Pennsylvania Company, is and was at the time hereinafter mentioned a corporation duly incorporated under the laws of Pennsylvania, and as such is now and was at the time here-
6 inafter mentioned operating, with its tracks, switches, cars, locomotives, and employees, a certain railroad commonly known as the Pittsburgh, Fort Wayne & Chicago Railroad Company, and passing through the counties of Stark and Mahoning, in said State; that on or about the 24th day of September, 1881, the *defendant* discedent, who had been in the employ of defendant for some time preceeding the said date as locomotive engineer, while in the discharge of his duties as said engineer, under the orders of defendant, by its officers and agents, was so running his engine, and attached thereto was a large number of passenger cars filled with passengers and constituting one of the fast passenger trains of defendant's road, running at the rate of about forty miles an hour, from the city of Pittsburgh west through the State of Ohio; that along and connected with the main track of defendant's road east of Alliance and in Smith township, in said Mahoning county, the defendant maintained a certain switch, about one-half mile long, for the purpose of — cars thereon; that said switch was so constructed on

account of the improper and unnatural grade and position and connection with the main track that cars placed thereon would immediately and with rapid speed run down upon the main track unless carefully and well secured by break-s thereon or by other suitable means, thereby making it dangerous and hazardous for trains to pass by the same without the greatest and most especial care in regard to the placing of cars thereon and watching the same, proper care requiring that one should be on watch there constantly
7 while cars are upon the switch, especially in stormy weather; that at said date, about 10 o'clock p. m., the defendant had on said switch about fifty freight cars, and by *their* agents did, about twenty minutes thereafter, remove from said switch all but sixteen of said cars, which sixteen remained on the rear end of said switch, and the defendant had by its agents and employees omitted and neglected to properly secure said cars and place necessary and proper guards over them and see that the same did not run down upon the main track, and especially was this their duty previous to the time when said fast passenger train was approaching near said switch; that said defendant had full knowledge of all said matters and *were* negligent in and about maintaining and operating the same in the manner aforesaid, as well as in the employment of incompetent and careless persons in and about the construction, maintainance, and management of said switch and the taking out and leaving cars thereon on said night, which was a stormy night, and in not placing a person to guard said switch, insomuch that on said night, about 10 o'clock p. m., the said sixteen cars, through the carelessness and negligence aforesaid, run down upon the main track and thereby obstructed the same, so that when descedent's train came to that point, the night being dark and stormy, without any negligence on his part, his engine and train collided with the same, and he was so injured that he died in a few hours thereafter, in the said county of Mahoning; that he was about the age of thirty-five years, able to work and earn one hundred dollars per month; was
8 married, his wife's name being Kate Teehen. He had dependant for support four children, named Waldo, Harry E., George, and Frederick, aged respectively four, six, twelve, and eighteen years, all of which are now living. Plaintiff says that by reason of the premises the defendant is liable to pay to him for the benefit of the wife and children aforesaid the full sum of ten thousand dollars, for which he asks judgment.

By ANDERSON & WOLF AND
JONES & MURRAY,
Plaintiff's Attorneys.

THE STATE OF OHIO, } *ss:*
Mahoning County, }

Before me, a notary public, personally came Bales M. Campbell, who, being duly sworn, says that matters and things stated in the foregoing petition are true, as he verily believes.

BALES M. CAMPBELL.

Sworn to before me and subscribed in my presence by said Bales M. Campbell this 25th day of July, A. D. 1882.

ROBERT B. MURRAY,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed: Petition. To clerk: Issue summons to sheriff of Mahoning county, — the defendant, returnable according to law. Amount claimed, $10,000. Filed July 28th, 1882. T. J. Fording, deputy clerk.

9 *Summons in Action for the Recovery of Money Only—Sections 57, 59, 103.*

THE STATE OF OHIO, } ss:
Mahoning County, }

To the sheriff of Mahoning county:

You are hereby commanded to notify the Pennsylvania Company that it has been sued by Bales M. Campbell, administrator of the estate of William Teehen, dec'd, in the court of common pleas of Mahoning county, and that unless it answer by the 26th day of August, A. D. 1882, the petition of the said plaintiff against it, filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 7th day of August, A. D. 1882.

Witness Lloyd Fording, clerk of said court, and the seal thereof, at Youngstown, this 28th day of July, A. D. 1882.

[Common Pleas Court Seal.]

LLOYD FORDING, *Clerk,*
By THOS. J. FORDING,
Deputy Clerk.

Endorsed: Summons. Amount claimed, $10,000.00. Returnable August 7, 1882. Returned and filed August 7th, 1882. Anderson & Wolf, Jones & Murray, plaintiff's attorney-.

Sheriff's Return.

THE STATE OF OHIO, } ss:
Mahoning County, }

Received this writ July 28th, A. D. 1882, — o'clock — m., and pursuant to its command, on the 4th day of August, A. D. 1882, I notified E. H. Hosmer, agent of the within-named def't,
10 The Pennsylvania Company, by delivering to him a true and certified copy thereof, with endorsements thereon, after having failed to find the president, vice-president, secretary, treasurer, chairman of board of directors, or any other managing officer or agent of said def't within my county.

GEORGE W. LODWICK, *Sheriff,*
By E. B. WALKER, *Deputy.*

Sheriff's fees:

Service	$ 30
Mileage	32
Cop.	20
Return	25
Docket	25
Total	$1 32

THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen, Dec'd, Plaintiffs, *vs.* THE PENNSYLVANIA COMPANY, Defendant. } Motion.

Now comes the defendant and moves the court to require the plaintiff to make more definite and certain the following paragraph in said petition: "That said defendant had full knowledge of said matters and *were* negligent in and about maintaining and operating the same in the manner aforesaid, as well as in the employment of careless and incompetent persons in and about the construction, maintenance, and management of said switches and the taking out and leaving cars thereon on said night, which was a stormey
11 night, and in not placing a person to guard said switch, insomuch that on said night, about 10 o'clock p. m., the said sixteen cars, through the carelessness and negligence aforesaid, run down upon the main track and thereby obstructed the same, etc., etc.," by stating what servant or servants of defendant are claimed by plaintiff to have been incompetent and negligent.

RUSH TAGGART,
Att'y for Defendant.

Endorsed: Motion. Filed Aug. 15th, 1882. T. J. Fording, deputy clerk.

THE STATE OF OHIO, }
Mahoning County. }

In the Court of Common Pleas.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen, Deceased, Plaintiff, *vs.* THE PENNSYLVANIA COMPANY, Defendant. } Amended Petition.

The said plaintiff, by leave of court first obtained, files this his amended petition and says that he is the administrator of the estate of William Teehen, deceased, legally appointed and duly qualified; that the defendant, The Pennsylvania Company, is and

was at the time hereinafter specified a corporation duly organized and existing under the laws of the State of Pennsylvania, and as such corporation was at the times hereinafter mentioned and
12 for many years prior thereto has been operating a line of railroad extending from the city of Pittsburgh, in the State of Pennsylvania, westward across the said State of Ohio and the said county of Mahoning to the city of Chicago, in the State of Illinois, and known as the Pittsburgh, Fort Wayne & Chicago Railroad, with all its switches, side tracks, spur tracks, and rolling stock; that plaintiff's decedent, the said William Teehen, was on the 24th day of September, A. D. 1881, and for many years prior thereto had been in the employ of defendant as locomotive engineer on said Pittsburgh, Fort Wayne & Chicago railroad, and running one of the fastest trains on said railroad. Plaintiff further says that on or about the year 18— the said defendant constructed a side track one-half mile long, in the township of Smith, in said county of Mahoning, by the side of the main track of said railroad and connected therewith by switches; that the said side track was improperly, unskillfully, and negligently constructed by said defendant in this: that it was built on an incline and in such manner that any cars placed thereon would of their own gravity, and especially if the slightest force was applied to start them, run down onto and block up and obstruct the main track; that defendant, well knowing the unskillful, improper, and negligent manner that said side track was constructed, permitted the same to so remain, and, well knowing the danger attendant thereto because of the negligent manner in which said side track was built, negligently and carelessly permitted and required its employees to use said side
13 track and to place and leave cars standing thereon and to use the same for all the purposes of a side track, and negligently omitted to keep a person at said side track and on the track at that point to watch the same and see that the main track was kept free and clear from o-structions; that the dangerous character of the side track required the defendant, in the exercise of ordinary prudence and care for the lives and safety of its employees and patrons, should keep a person employed to watch the track at that point, which is close to Alliance yard, and see that the same was kept free and clear from obstructions and in proper condition for the safe passage of its fast passenger train; which duty defendant negligently and carelessly omitted and refused to perform, in utter disregard of the lives and safety of its employees and passengers; that on or about the said 24th day of September, A. D. 1881, defendant, with full knowledge on the part of its officers and managers of the premises, permitted and required its employees to use said side track for the purpose of standing cars thereon, and they did place and leave on said side track on said last-mentioned day a large number of cars; that no person was left in charge of said cars so left standing on said side track or to see that the main track of said railroad was kept free and clear from obstructions; that owing to the unskillful, negligent, and improper manner said side track was constructed said cars so placed thereon started from

their places and ran down and upon the main track of said railroad and there remained, obstructing the same; that plaintiff's decedent, in the regular course of his employment as locomo-
14 tive engineer for defendant, on the evening of said 24th day of September, A. D. 1881, had charge of the locomotive which was attached to and drawing a regular passenger train on said railroad, going west; said train was a large one, carrying many passengers, and plaintiff's decedent was required by the orders of defendant and to comply with the schedule time established for said train to draw his locomotive at a very high rate of speed, as he was required to do by defendant, as aforesaid, and with no negligence on his part and without knowledge or notice of said obstruction on the track, owing to the negligence of defendant in not having a person to walk and watch the track at that place and warn approaching trains of any obstructions that might be thereon, the said locomotive and train of plaintiff's decedent aforesaid collided with the cars which had run on said track from the switch as aforesaid, whereby said William Teehen, decedent, received injuries from which he died in a few hours; that said William Teehen was about 35 years of age, able to work and earn $100 per month; that he left a surviving widow, Kate Teehen, and 4 minor children, as follows: Waldo, Harry E., George, and Frederick.

Plaintiff says that by reason of the premises the estate of his said decedent has been damaged in the sum of ten thousand dollars ($10,000), for which sum he prays judgment against said defendant.

15 SANDERSON & NORRIS AND ANDERSON,
Attorneys for Plaintiff.

THE STATE OF OHIO, }
Mahoning County. }

Bales M. Campbell, being duly sworn, says he believes the facts stated in his foregoing amended petition to be true.

BALES M. CAMPBELL.

Sworn to before me and subscribed in my presence this 1st day of March, A. D. 1884.

WILS. C. STERLING,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed: Amended petition. Filed March 1, 1884. Lloyd Fording, clerk.

THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen, Dec'd,
vs.
THE PENNSYLVANIA COMPANY.
} Answer to Amended Petition.

And now comes the defendant and by way of answer to plaintiff's amended petition says it *it* admits that William Teehen was
16 in its employ as an engineer at the date named in said petition; that he was killed on the 28th day of Sept., 1881, while in its employ, and that the defendant is and was a corporation operating a line of railroad with its side tracks as averred in said petition, and it denies each and every other allegation contained in said petition.

RUSH TAGGART,
Att'y for Defendant.

THE STATE OF OHIO, } ss:
Columbiana County, }

Rush Taggart, being first duly sworn, says he is the att'y of the defendant, and that he believes the allegations of the foregoing answer to be true.

RUSH TAGGART.

Sworn to before me and signed in my presence this 29th day of March, 1884.

[NOTARIAL SEAL.]

SHELDON PARKS,
Notary Public.

Endorsed: Answer. Filed April 5th, 1884. Lloyd Fording, clerk.

THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

17 BALES M. CAMPBELL, as Administrator of William Teehen, Dec'd, Plaintiff,
vs.
THE PENNSYLVANIA COMPANY, Defendant.
} Motion to Strike Deposition from the File.

And now comes the defendant and moves the court to strike from the files the depositions taken in Pittsburgh Sept. 25, at the office of William B. Rodgers, att'y, and in support of the motion refers to affidavit filed herewith.

RUSH TAGGART,
Att'y for Defendant.

STATE OF OHIO, }
—— *County*, } ss:

Rush Taggart, being first duly sworn, says that he is the att'y of the defendant upon whom notice was served of the *the* intention of the plaintiff to take depositions in the above entitled cause, at the office of William B. Rodgers, No. 98 Diamond street, Pittsburgh, Penna., on Thursday, Sept. 25th, 1884; that on the morning of said day he went to said city, and about 11 o'clock in the forenoon of said day went to said office and inquired about the taking of said depositions and was told by the person then in charge of said office, whose name is unknown to affiant, that the witnesses had been notified the day previous that no depositions would be taken; that plaintiff's att'ys had been written to that the depositions would not be taken, and that no witnesses could be obtained that day.
18 This affiant says that none of the pl'ff's att'ys were present, and that acting upon the foregoing statements he came away from the city of Pittsburgh on an early train, and that, as he is informed, the depositions filed herein were taken in said office after his departure therefrom.

RUSH TAGGART.

Sworn to before me and signed in my presence this 3rd day of December, 1884.

[SEAL.] A. O. FORDING,
Deputy Clerk.

Endorsed: Motion. Filed Dec. 3, 1884. Lloyd Fording, clerk.

THE STATE OF OHIO, }
Mahoning County, } ss:

In the Court of Common Pleas.

BALES M. CAMPBELL, Administrator of the Estate of William Teehen, Plaintiff,
vs.
THE PENNSYLVANIA COMPANY, Defendant.
} Petition for Removal.

And now comes the defendant and petitions the court for the removal of this cause from the common pleas court of Mahoning county, where the same is now pending, to the circuit court of the United States for the northern district of Ohio, eastern division thereof, for the following reasons: The defendant says that it is a corporation duly incorporated and organized under the laws of the State of Pennsylvania, and as such is a citizen and resident
19 of said State of Pennsylvania; that said Bales M. Campbell, the plaintiff in said action, is a citizen and resident of the county of Mahoning and State of Ohio; that the matter in dispute in said controversy between Bales M. Campbell and this defendant exceeds the sum of $500, and is to recover the sum of $10,000.00. Defendant sayd, further, that as a citizen and resident of said State of Pennsylvania it has reason to believe and does believe that from

prejudice and local influence it will not be able to obtain justice in said State court in said action. It offers in connection herewith bond conditioned for its appearance in the Federal court and entering said cause on the first day of the next term of the circuit court thereof and for doing and abiding by all the acts required of it in accordance with the acts of Congress of the United States governing the removal of causes. It therefore asks that no further proceedings be had in this cause, and that suitable order be made by the court to its clerk to furnish a transcript to the defendant herein.

RUSH TAGGART,
Att'y for Defendant.

THE STATE OF OHIO, *Columbiana County,* } ss:

Rush Taggart, being first duly sworn, says that he is the solicitor of the defendant, having the management and control of the defense in said cause for and on behalf of said defendant, and that the said defendant makes this application to the said court for the
20 removal of said cause upon the ground that it has reason to and does believe that from prejudice and local influence the said defendant will be unable to obtain justice in said State court. Said affiant says further that he believes the facts stated in the foregoing application to be true in substance and in fact.

RUSH TAGGART,
Solicitor for Defendant.

Sworn to before me and subscribed in my presence this 22nd day of January, A. D. 1885.

SHELDON PARKS,
[SEAL.] *Notary Public.*

Endorsed: Petition for removal. Filed Jan. 24th, 1885. Lloyd Fording, clerk.

THE STATE OF OHIO, *Mahoning County,* } ss:

In the Court of Common Pleas.

BALES M. CAMPBELL, Adm'r of Estate of Wm. Teehen, Plaintiff,
versus
THE PENNSYLVANIA COMPANY, Operating the ——, Defendant. } Bond.

Know all men by these presents that we, Rush Taggart, of Salem, in the county of Columbiana and State of Ohio, and —— ——, of ——, in the county —— and State of Ohio, are held and firmly bound unto Bales M. Campbell, adm'r, of
21 Mahoning county, Ohio, in the sum of three hundred dollars, lawful money, to be paid to said Bales M. Campbell, his successors or assigns; to which payment, well and truly to be

made, we hereby bind ourselves, our heirs, executors, and administrators, by these presents. The condition of this bond is such that whereas the said Bales M. Campbell, adm'r of the estate of Wm. Teehen, did, on the 28th day of July, A. D. 1882, filed his petition in the court of common pleas of Mahoning county, Ohio, against said Pennsylvania Company to recover the sum of ten thousand dollars ($10,000); and whereas the same is now pending in said court, and the said Pennsylvania Company, defendant in said action, has this day filed its petition in said court of common pleas to remove said cause from said court of common pleas of Mahoning county, Ohio, to the circuit court of the United States for the northern district of Ohio: Now, if the said defendant, The Pennsylvania Company, shall enter in said circuit court on the first day of its next term a copy of the record in said suit so commenced by the said Bales M. Campbell, adm'r, and shall pay all costs that may be awarded by the said circuit court if the said circuit court shall hold that this suit has been improperly or wrongfully removed thereto, and shall there appear and enter special bail in the said suit, and shall do or cause to be done such other appropriate acts as by the acts of Congress providing for the removal of causes from State courts to the circuit courts of the United States may be required to be done by it, then the above obligation is to be null and void; otherwise to be and remain in full force and effect.

22

Witness our hands and seals, at ——, this 22d day of January, A. D. 1885.

RUSH TAGGART. [SEAL.]

Signed and sealed in presence of—

—— ——.

The above bond is hereby accepted and approved. Dated this 24th day of Jan., A. D. 1885.

LLOYD FORDING, *Clerk.* [SEAL.]

Endorsed: Removal bond. Filed Jan. 24, 1885. Lloyd Fording, clerk.

THE STATE OF OHIO, } ss:
Mahoning County, }

I, Lloyd Fording, clerk of the court of common pleas within and for said county and State, having in my official care and custody the records and files of said court, do hereby certify that the foregoing papers are a full and correct transcript of all the docket and journal entries in this case and true copies of the original pleadings and papers therein filed, and that the depositions hereto attached are the original depositions taken and filed in this case.

Witness my hand and the seal of said court, at Youngstown, this 4th day of February, A. D. 1885.

LLOYD FORDING, *Clerk,*
[SEAL.] By A. O. FORDING, *Deputy.*

23 And afterwards, to wit, on Friday, February 28th, 1890, an order was entered in this cause, which is in the words and figures following, to wit:

BALES M. CAMPBELL, Adm'r,
vs.
THE PENNA. COMPANY. } Law. 4347.

This day came the parties, by their counsel, and a jury, being called, came, to wit, W. H. H. Robison, David Murray, J. J. Benton, N. L. Post, Chas. A. Hall, James Carson, R. T. Holden, T. N. Ganyard, M. Dessenburh, Geo. Schlaterbeck, Geo. H. Cain, John Schrinck, who, being duly elected, were duly empannelled and sworn to well and truly try the issues joined between the parties at the bar of court, and thereupon the trial of this cause proceeded. Plaintiff's testimony-in-chief was closed and testimony on behalf of defendant was begun, but not closed, when further proceedings in this case were postponed until to-morrow morning.

And afterwards, to wit, on Saturday, March 1st, 1890, an order was entered in this cause, which is in the words and figures following, to wit:

24 BALES M. CAMPBELL, Adm'r,
vs.
THE PENNA. CO. } Law. 4347.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empannelled and sworn herein, and the trial of this case proceeded. The testimony was closed and argument of counsel begun, but not closed, when further proceedings in this case were continued until Monday morning next, at 9.30 o'clock.

And afterwards, to wit, on Monday, March 3d, 1890, and order was entered in this cause, which is in the words and figures following, to wit:

BALES M. CAMPBELL, Adm'r,
vs.
THE PENNA. COMPANY. } Law. 4347.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empannelled and sworn herein, and the trial of this case proceeded. The arguments of counsel were concluded, and the jury, having first received their instructions from the court, retired for deliberation in charge of a sworn officer of the court; and the said jury not having arrived at a verdict when the hour of adjournment arrived, further proceedings in this case were postponed until to-morrow morning.

Whereupon the plaintiff, to maintain the issues on his part, offered as a witness CATHERINE TEEHEN, who, being duly sworn, testified as follows:

By Mr. SANDERSON:

Q. Are you the widow of William Teehen?
A. Yes, sir.
Q. How many years ago were you married to Mr. Teehen?
A. Married in 1870—October.
Q. And at the time of his death where did you reside?
A. Allegheny, Pennsylvania.
Q. What was his age in September, 1881?
A. 41 in March—March of 1882.
29 Q. He was forty, past, then, at the time of his death?
A. Yes, sir.
Q. At that time what children had Mr. Teehen?
A. Fred. Teehen, seventeen years old; George Teehen, fourteen years old; Harry, five years old in October, and Walter, three.
Q. Were the first two you mentioned your children?
A. No, sir; they were not. By a former wife.
Q. This is Walter that is here?
A. Yes, sir.
Q. At that time three years old? You have given the ages at that time?
A. Yes, sir.
Q. Where is Fred.?
A. He is dead.
Q. When did he die?
A. He died April 12th, 1885.
Q. And George?
A. Living.
Q. Where does he live?
A. Manning, Iowa.
Q. The other two boys, Harry and Walter—your boys—are living?
A. Yes, sir.
Q. Where do you reside?
A. Millbury, Massachusetts.
Q. When did you move to Massachusetts?
A. Two weeks after the accident.
Q. Do you know how long your husband had been employed by the Pennsylvania Company at the time of his death?
30 A. As near as I can remember, fourteen years.
Q. And during that time what were his duties—what was he doing?
A. Had formerly been freight engineer.
Q. How long had he been running an engine?
A. About sixteen years.
Q. I mean for the Pennsylvania Company.
A. Oh, thirteen years. He ran at Wellsville awhile before going to Alleghany.

Q. Then he ran an engine, as I understand you, about fourteen years?

A. Yes, sir.

Q. At the time of his death do you know what train he was connected with?

A. The limited express.

Q. Do you know about how long he had been running that limited express as enginedr?

A. Nine months, I should say.

Q. Had he been running other trains before that time for that road?

A. Extra passenger occasionally.

Q. Where were you the night he was injured?

A. At home in bed.

Q. In Alleghany?

A. Yes, sir.

Q. When did you first learn of the injury or accident?

A. I should say it was 12 o'clock midnight.

Q. When did you first after that see Mr. Teehen?

A. On Sunday morning at 9 o'clock.

31 Q. Where?

A. At my home.

Q. You may state whether he was then living or dead.

Mr. BOYLE: We admit he was dead.

A. Dead.

Q. Some three weeks after that you say you moved to Millbury?

A. Yes, sir.

Q. You had relatives there?

A. A sister.

Q. After Mr. Teehen began to run the engine, and especially the limited express, do you know what wages he received from the company?

A. Averaging $130, $135, and $140.

Q. Per month?

A. Yes, sir.

Q. The wages given to you, were they, generally?

A. Yes, sir; always.

Q. You had that means of knowing, had you?

A. Yes, sir.

Q. So that it would average about $140 or $135?

A. Yes, sir; somewhere along there, per month.

Q. You said he was 41 years of age. What was his condition of health?

A. In perfect health.

Q. Had you ever known him to be ill?

A. Never since I had been his wife, more than and ordinary cold.

Q. After you were married where did you reside with Mr. Teehen?

32 A. I came direct to Alleghany. I was married in the East, in Boston.

Q. And resided there all the time?
A. Yes, sir.
Q. From the time of your marriage up to the time of his death?
A. Yes, sir.
Q. You say during that time you never knew him to be ill?
A. Never knew him to be ill.
Q. Was he at any time off duty?
A. Never when he was wanted; never when it was required that he *he* should perform his daily duty.
Q. Do you know about what time he left with his train the night of the accident?
A. He left our home ten minutes past six; I could not say the exact time that he left with his train.

Cross-examination by Mr. BOYLE:

Q. Mrs. Teehen, prior to the time that your husband ran the limited train, which was nine months, as I understand you, before the accident, you say he was running the extra passenger train?
A. Yes, sir.
Q. And running a freight train between times?
A. His regular run was a freight train; ran engine 350; ran to Youngstown, New Castle, and Alliance, and at times, during the busy season, I have known of his running extra passenger.
Q. How long was he a freight engineer?
A. I should judge thirteen years.

33 The following depositions were read on behalf of the plaintiff: Findley Barber, C. C. Douglass, John Alexander, Dr. J. H. Tressel, James S. Davis, Alexander Frazer.

Caption for Depositions.

Depositions taken before me, Orlando B. Hoover, a notary public within and for the county of Stark, in the State of Ohio, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the plaintiff in an action pending in the court of common pleas in and for Mahoning county, in the State of Ohio, in which Bales M. Campbell, administrator of William Teehen, dec'd, — plaintiff and The Pennsylvania Company, defendant.

Present: R. B. Murrey and M. A. Norris, on behalf of the plaintiff, and Rush Taggart, on behalf of the defendant.

Time of taking depositions continued until Sept. 6th, '84, at 1 p. m., by agreement.

TINLEY BARBER, of lawful age, being by me first duly sworn, as heretofore certified, deposes and says as follows:

By ROBERT MURREY:

1st Q. State your name, age, occupation, and place of residence.
Ans. My name is Findley Barber; I am 34 years of age; I am civil engineer by occupation, and I reside in ——.

2d Q. Please state where you now reside and what position you hold, if any, under the Penna. Co.

34 Reside in Alliance; supervisor of the eastern division of the Fort Wayne roads.

State what are included in your duties as supervisor.

I am charged with the safety and maintenance of way of the tracks and bridges, general supervisor of all repairs, laying of all sidings and tracks of all discriptions.

Please state how long you have been acquainted with what is known as the tank siding lying east of Alliance and being the most southerly track east of Alliance.

During the time I have been supervisor, one year and a half; I know of it by seeing it occasionally since 1881—March, 1881.

Please state what change, if any, has been made in the grade of the "tank track" since your knowledge of it.

I know of no change having been made, nor alteration whatever.

What repairs or changes in the character of the switch or switches has been made on that track, if any, during — knowledge of it, since September 28th, 1881?

No repairs whatever that I know of; I hav'n't ordered or made any with the exception of taking up an iron casting at east end of switch.

How long had that casting remained there?

I don't know how long. I suppose it was put in at the time the switch was put in. It was damaged to such an extent that I

35 removed it some two weeks ago.

What other changes have been made in the track and switch? I refer to the safety switch that has been put in there.

And when objected to by defebdant's counsel—

Cross-examination:

How was the casting damaged that you took out of switch?

A. The main track rail had been in use so long and was of a different height and allowed the flanges of the wheel to strike and broke the projections of it—had a tendency to br-ake the flanges of the wheel.

F. BARBER.

Also came C. C. DOUGLASS (who, being duly sworn, deposes and says):

Please state your name, age, occupation, and place of residence.

My name is C. C. Douglass; age, 37 yrs. of age; conductor; residence, Alliance, Ohio.

Please state what position you held in the Penna. Company on September 28th, 1881, at the time of the disaster which occur-ed near tank track east of Alliance.

I was dispatcher.

With what duties were you charged.

I was charged with the duties of the yeard here—that general business of the trains, making up trains and ordering them out.

36 Please state what east-bound freight trains you ordered out that evening previous to the accident, between 8 o'clock and the time of the accident.

I think the accident was about 10.40 o'clock p. m.; probably five or six trains.

Please state who was in charge of the freight train that went out last before the accident.

William Stagers was the conductor. I think John Welch and John Alexander were the brakmen.

What did you say to Stagers as to what he should do at the tank switch?

I did not say anything to him; his orders were written on his train bill.

The train bill was made up by my clerk, and I ordered what it should contain; he was to take off cars from two different tracks—quite a number off the tank track.

About how long after he had taken the cars off the tank track did you hear of the accident?

I should say it was about an hour and twenty or thirty minutes.

Please state fully what you observed when you arrived at the wreck as to Wm. Teehen and Wm. Robertson.

They had just gotten out when I got there from the wreck, and carried them into Wm. Quinn's house. I found the passen-

37 ger train, No. (5), Chicago limited express, one of the fastest passenger trains on the road, had collided with some empty gondolias. They were on the main track, but had came from the "tank track." Thirteen were standing on the main track, and three had been demolished.

Was there any cars on the tank track left?

There was not.

Please state who was engineer and fireman on the passenger train.

William Teehen (engineer) and William Robertson, fireman.

Where was the engine of which they had charge?

Lying on the north side of the north track, in Quinn's yard.

What injuries did you observe that they had sustained?

The most injury that I observed was that they were scolded with steam all over the body and inwardly, two, from which they both died that night. Teehen died first, Robertson about one-half hour afterwards.

How far below the switch of this "tank track" did the passenger train appear to have struck the gondolias?

I coulden't say; should thing about 800 or 1,000 feet.

Where previous to the time of the accident had you last seen the gondolias, and when?

38 The last I saw of them was on the "tank track," about 8 o'clock.

At the time the accident occur-ed what trains had the right of way over the track?

No. 5 had the right of way.

How long previous to the accident had Stagers' train left the switch?

From an hour to an hour and twenty minutes.

What was the number of Stagers' train?

No. (16).

What was the last train that came in from the east prior to the accident?

An exposition excursion train.

What train going west placed any cars upon the tank track that evening before the accident?

Not any at all, before or after.

What change, if any, has been made in the grade of the "tank track" since the accident?

Not any to my knowledge. I am at present a conductor on the Fort Wayne, on the Penna. Co.'s line.

Cross-examination:

What train or engine put cars on the tank track that day?

The shifting engine.

39 When had the shifting — been at the tank track to put cars on or to take them off?

Not later then half past seven.

After that had any train been at the tank track but Stagers'?

I could not say, but think one of the sections ahead of Stagers took some cars off.

Was there any difficulty in holding cars on tank track with brakes set?

No, sir.

How far east does the grade continue the same as the grade of the "tank track"?

The grade continues about a mile, but do not think it is so heavy.

Is the grade heavy enough for cars once started on the "tank track" to run to the east limit of the grade?

Objected to.

Yes, sir; I think it is.

What time did the exposition excursion train come in?

About 10 o'clock.

On what track?

On the north track.

40 Would cars with brakes set move out of the tank track onto the main track?

No, sir.

Re-examination:

Would cars without the brakes being applied stand upon the tank switch?

No, sir; they wouldn't.

Would cars standing on "tank track" with brakes set move down

onto the main track if brakes were loosened without force being applied?

Yes.

C. C. DOUGLASS.

Present: M. A. Norris, Esq., on behalf of the plaintiff, and —— ——, on behalf of the defendant.

And adjourned to meet Sept. 26th, 1884, 10 o'clock a. m., at office of notary, 96 Diamond street, Pittsburgh.

And now, Sept. 26th, 1884, 10 o'clock a. m., at place designated above, JOHN T. ALEXANDER, of lawful age, being by me first duly sworn, as heretofore certified, deposes and says as follows:

41 By M. A. NORRIS, Esq.:

1st Q. State your name, age, occupation, and place of residence.

A. My name is John T. Alexander; I am twenty-seven years of age; I am flagman on R. R. by occupation, and reside in # 234 Washington avenue, Allegheny City, Pennsylvania.

2d Q. By what railroad company are you now employed?

A. By the Pennsylvania Company.

3d Q. How long have you been in the employ of the Pennsylvania Co. and in what capacity, if any, other than that of flagman?

A. Six years this month. I was brakeman at first and continued as brakeman until January 1st, 1884. Since that time I have been flagman?

4th Q. State whether or not you were acquainted with William Teehen.

A. Yes, sir.

5th Q. State where you were on the evening of Sept. 24th, 1881; I mean the night Teehen was killed.

A. I think we were with No. 16 then—that is, that was the number of the train from Alliance, State of Ohio, to Allegheny City, Pennsylvania.

6th Q. State as near as you can the time of day or evening that you left Alliance.

—. I could not just say what time we left there; it was in the evening, I think, after dark.

7th Q. State, if you know, in what capacity William Teehen was employed on the road and what train he was running on the day above mentioned.

42 A. He was engineer of No. 5 train.

8th Q. What kind of a train is No. 5 train and which way was it going?

A. It was a through passenger train, with sleeping cars attached. It was going west from Pittsburgh.

9th Q. Where did you and your train pass Teehen's train?

A. At Beloit, which is east of Alliance, about five miles.

10th Q. State if you know if any other train left Alliance going east after your train left and before Teehen's train reached Alliance.

A. I don't think there was. There is no other meeting place betwe-n Beloit and Alliance and no train came to Beloit from Alliance—that is, not ahead of that train.

11th Q. State whether or not you were acquainted with and know the location of a siding in Alliance on the south side of the main track, extending from near the water tank up to the round-house, and commonly called the tank siding.

A. I know this siding.

12 Q. Describe the siding; tell whether it is on a level or at grade; if at grade, which way it descends.

A. It is a- grade; extends eastwardly; it descends.

13 Q. State how long you have known the siding.

A. Ever since I have been on the road.

14th Q. State whether or not during that time the grade of the siding has been changed, to your knowledge.

A. Not that I know of.

15th Q. State what kind of a switch connect- this siding with the main track.

A. I don't recollect precisely, but I think it was a Horton or Wharton switch.

43 16 Q. When is a switch open and when is a switch closed?

A. A switch is open when it is fixed to run the cars on a side track and closed when it runs the cars on the main track.

17th Q. State whether or not the cars would run from this tank siding down over this switch and onto the main track when this switch was closed.

A. The cars would run off the siding, and I could not say whether they would stay on the main track.

18th Q. During the time you have been employed on the railroad—that is, for six years past—state, if you know, for what purpose the railroad company has used this tank siding.

A. Well, to put cars in there that lays over for which they have no room above; they use it for storing cars.

19th Q. State whether or not there were any cars standing on the tank siding when you left Alliance on the evening of Sept. 24th, 1881.

A. Yes, sir; if that was the evening that Teehen was killed. I mean that evening.

20th Q. About how many?

—. I can't say; I was not back; I haven't much idea. I know there were cars on there.

21st Q. State whether there were any cars taken off of that siding and put into the train you were on that evening; and, if so, about how many?

A. Yes, sir; we took cars off there; I could not say how many.

22d Q. State who assisted in taking these cars off from the siding.

A. Stegers, the conductor of our train. Welsh waw the rear brakeman. I cut the engine off the main track and left in after the cars.

44 23d Q. State whether or not you left any cars laying on the siding.

A. I know there were some left, but I was not back to the rear end and could not say how many we left.

24 Q. State whether or not you had any difficulty in making cars stand on that siding without setting the brakes pretty tight.

A. The brakes have to be set tight in order to make the cars stand on that siding.

25 Q. State, if you know, what would be the result if boys or other persons should loosen the brakes of cars standing on that siding.

A. They would run out—that is, to the end of the switch—and block up the main track.

26th Q. State whether the above was the condition of things in Sept., 1881.

A. Yes, sir.

27th Q. State whether you know of any watchman being employed at the siding at this point to see that the track was kept clear.

A. Not that I know off.

28th Q. What change, if any, has been made in that tank siding since Teehen was killed?

A. There has been a cut-off or safety switch put in.

J. L. ALEXANDER.

Attest: N. S. WILLIAMS.

45 Also Dr. J. H. TRESSEL, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

1st Q. State your name, age, occupation, and place of residence.

Ans. J. H. Tressel; age, 47 years; occupation, surgeon; place of residence, Alliance, Stark county, Ohio.

2 Q. State how, if at all, you are connected with the defendant.

A. I am surgeon for the company.

3 Q. State whether or not you were acquainted with William Teehen and William Robertson when living.

A. I had no acquaintance with them; merely knew them as being employed by the company.

4 Q. State when you last saw them alive and under what circumstances.

A. I believe it was the night of the 28th of Sept., 1881, by being summoned to attend them in case of injury. I found them at William Quinn's house, in East Alliance.

5 Q. Please describe William Teehan's condition at that time as to injuries as fully as you can.

A. I found extensive external scaldings and internal scalding of the mucous surface of the mouth, throat, and lungs. The external injury was the action of hot water and steam, and the internal scalding by the inhalation of steam. The scalding on one arm and a portion of the body was sufficient to cause cuticle to peal from the body. I was with him shortly after the accident and remained with him and cared for him until death. The death occur-ed in about one hour and forty or fifty minutes after I first saw him. The death,

in my opinion, was cause- from shock, asphyxia, or the lungs
46 being unable to impart oxygen to the blood from the air, owing to the internal scalding.

6 Q. Did you talk with Teehan any before he died?

A. I did; but only as far as related to his injuries in a surcical point of view.

7 Q. Please describe the condition you found Robertson in as fully as you can.

A. I found Robertson in a state of deeper external scalding than Teehan, but not so severe internal; and the cause of his death, in my opinion, which occur-ed in about one hour and thirty or forty minutes after I saw him, was mainly from shock, caused by external scalding.

8 Q. Did you talk with him any before he died?

A. Only as my duty as a surgeon required.

J. H. TRESSEL, M. D.

Also JAMES L. DAVIS, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

1 Q. State your name, age, occupation, and place of residence.

A. My name is John L. Davis; age is 43 years; occupation, passenger conductor; reside at Allegheny City, Penn.

2 Q. Please state by what corporation you are now employed and how long you have been in its employ.

A. I am in employ of the Pennsylvania Company; have been in the employ of the Pennsylvania Company 23 years.

3 Q. On what road are you employed and what train are you conductor of and how long have you been conductor of such train?

47 A. On the P., Ft. W. and C. division of the Pennsylvania Company; am conductor of train number five, called the limited express. The train I am running now I have run ever since it was put on, about five years, less or more.

4 Q. State whether or not you were acquainted with William Teehan and William Robertson before they died.

A. Yes; I was acquainted with Teehan and Robertson slightly.

5 Q. Where — you on the evening of Sept. 28th, 1881—that is, the night of the accident near Alliance in which Teehen and Robertson were killed?

A. I was conductor of that train from Pittsburgh—that is, train No. 5, running west from Pittsburgh.

6 Q. What time was that train due at Alliance at that time?

A. In the neighborhood of ten or eleven o'clock p. m.

7 Q. Who was the engineer and who the fireman of the locomotive drawing No. 5 on that evening?

A. Wm. Teehen was engineer and Robertson fireman.

8 Q. State whether or not you had orders from anybody connected with the defendant to look out for obstructions on the track east of Alliance or notice from anybody that there were any obstructions on the track on the evening in question.

A. None that I recollect of.

9 Q. State how the fact is under the operating rules of the defendant, whether the conductor receives copies of all orders received by the engineer of the train.

A. All orders are addressed to the conductor and engineer.

10 Q. What, if anything, occur-ed to your train that evening east of Alliance?

48 A. The train was wrecked by running into cars on the main track at the point in question. The cars were what we call gondolas. I don't know how many there were.

11 Q. Please state as near as you can the place where the wreck occur-ed, and describe fully how much your train was wrecked or injured.

A. As near as I can recollect, a hundred feet east of the water tank. The engine was thrown from the track; also the baggage-cars and first coach.

12 Q. Who, if any one, was injured in said wreck?

A. Wm. Teehan, engineer, and Robertson, fireman.

13 Q. Where did you first see Teehan and Robertson after the wreck?

A. In the engine cab.

14 Q. Please describe fully the condition you found the engine and cab in and where Teehan and Robertson were, what there condition was, and what was done for them and with them.

A. The engine was very badly wrecked and also the cab crushed. Teehan and fireman were found near the boiler-head; were taken out as soon as possible and taken to the house of Quinn; medical assistance summoned immediately. They were very black from the dirt and suffering from scalds.

15 Q. State, if you know, how long Teehan and Robertson lived after they were taken out.

A. As near as I can recollect, Teehan lived perhaps an hour an- a half and Robertson perhaps three-quarters of an hour longer.

49 16 Q. State what the condition of the steam pipes on the boiler next to the cab was.

A. I do not know.

17 Q. State, if you remember, how it was as to steam and hot water escaping from the engine into the cab where Teehan and Robertson where found.

(Objected to.)

A. I don't remember of seeing steam or water escaping from any particular point.

18 Q. On which track was you- train approaching Alliance and how many tracks were there at the place where the wreck occur-ed?

A. The train was on what is now known as the south track. There were two tracks at that point—the main track and a long siding.

19 Q. You say the wreck occur-ed about one hundred feet east of the water tank; what water tank do you refer to?

A. The first water tank east of Alliance, nearly opposite Quinn's house.

20 Q. Do you know of the siding they call the tank siding?

A. I do.

21 Q. Where is that siding located with reference to the water tank in question?

A. West of the water tank.

22 Q. And on which side of the track on which your train was wrecked in this tank siding?

A. On the south side of the track.

23 Q. Had you any knowledge or notice or Mr. Teehan, the engineer, as far as you know, that these gondolas were on the track ahead of you before you struck them?

(Objected to.)

A. I had not.

24 Q. State whether or not you saw any flagman or watchman about there that evening to notify your train that these gondolas were on the track and obstructing it.

A. Not that I remember of.

25 Q. Would you be apt to remember it if there had been one there?

(Objected to.)

A. So far as I know, there was no flagman there; there may have been a flagman there and not flagged the train; I would not be the one to see it.

26 Q. State what train had the right of way to the track at the place where the wreck occur-ed at the time of the wreck.

A. Train number five of that date. That is the train of which I was conductor and Teehen was engineer.

27 Q. State how the fact was as to whether the engine was reversed and break-s applied to the cars at or before the time you struck the gondolas, as near as you can remember.

A. I think the engine was reversed, and I am not certain as to the break-s being applied immediately before striking; the thing come so quickly I could not tell.

28 Q. How many cars composed you- train that evening?

A. As near as I can recollect, there were four cars to the train in all.

29 Q. About how many passengers were aboard?

A. That is simply guess-work. I should say thirty-five or forty.

30 Q. Who, if any one, besides Teehen and Robertson were injured?

(Objected to.)

A. No one.

Cross-examination:

1 Q. I understand you to say, Mr. Davis, that at the time this accident occur-ed there was but one main track; that the north track was simply a siding for the storage of freight cars. Am I correct?

A. What is now known as the north main track was not formerly opened for the use of trains.

J. S. DAVIS.

Also ALEXANDER FRASER, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

1 Q. State your name, age, occupation, and place of residence.

A. My name is Alexander Frazer; I am forty-five years of age; my occupation is baggage-master on the Pt., Ft. W. and C. railroad; I reside at Bellevue, Alleghany county, Pennsylvania.

2 Q. State if you were acquainted with William Teehan and William Robertson and where you were and what your business was on the night they were killed.

A. I was pretty well acquainted with Teehan and slightly with Robertson. I was in the baggage car—train baggage-master—(train No. 5) on the night they were killed.

52 3 Q. State what, if anything, happened to that train as it was approaching Alliance.

A. They run into some flat cars, wrecked the engine and baggage car. I do not know whether there was anything off or not. I was not back

4 Q. Please tell where the wreck was as near as you remember.

A. The wreck was right opposite Quinn's house.

5 Q. Who, if any one, was injured and how seriously?

A. The engineer and fireman were injured so that they died from the effects of it. No one else that I know of was injured.

6 Q. Who were the engineer and fireman that were thus injured?

A. William Teehan, engineer; William Robertson, fireman.

7 Q. State what you did and saw with reference to the engineer and fireman.

A. I just saw the engineer as they got him out and carried him over to Quinn's house, and the fireman I didn't see at all. I went back to my baggage car and stayed there till they transferred me to another car.

8 Q. Where did they take the engineer out from?

(Objected to.)

A. He was outside the engine when I saw the parties carrying him out.

9 Q. Who were carrying him?

A. Mr. Davis, the conductor, was one; I do not remember who the others was.

10 Q. State whether or not you saw any flagman or watchman about there or know of one being there to notify the train

53 men in charge of number five that these flat cars you speak of were obstructing the track.

(Objected to.)

A. I don't know whether there was any — there or not; there might have been and me not know it. I am in the baggage car

and never know what is going on outside. I don't know of any — being there.

12 Q. State as near as you can remember whether the engine was reversed and break-s applied to the cars at the time or before the flat cars were struck.

A. I don't know.

13 Q. What kind of break-s were there on train No. 5 that evening?

A. Westinghouse air-break-s.

14 Q. By who- is the force applied to the Westinghouse break- on a train?

A. By the engineer.

ALEX'R FRASER.

54 The plaintiff, to further maintain the issues on his part to be maintained, produced as a witness Mrs. ELLEN QUINN, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. You live in Alliance?

A. East Alliance; yes, sir.

Q. Some little distance east of the depot ¿

A. Yes, sir.

Q. How long have you lived there?

A. About thirty-eight or thirty-nine years.

Q. Then you lived where you do now in 1881?

A. Yes, sir.

Q. And do you remember the water tank that used to be on the south side of the railroad track there?

A. Yes, sir.

Q. That has been removed since 1881?

A. Yes, sir.

Q. How far east of that water tank is your house?

Q. I could not tell you how far it is.

Q. A small distance, is it?

A. Yes, sir; a small distance.

Q. Your house is on the north side of the railroad track?

A. Yes, sir.

Q. And right close to the track?

A. Yes, sir.

Q. Do you remember the circumstances of the accident that occur-ed there in 1881?

A. Yes, sir.

55 Q. Where were you on that evening when it occur-ed?

A. I was in bed, and I heard it.

Q. What did you hear first?

A. I heard the hollowing of the men and heard the noise of the train when it knocked.

Q. The noise of the train when it struck the cars?

A. Yes, sir.

Q. Where did that occur?

A. Right at the door.
Q. Right in front of your house?
A. Yes, sir; in front of the house.
Q. When you went out what did you see there?
A. I didn't have time to get out till a man came to the door and wanted to know if he could bring those two men that was scalded?
Q. And they brought Mr. Teehan and Mr. Robinson into your house?
A. Yes, sir; brought them in.
Q. And they both died there?
A. Yes, sir.
Q. Now, from your house can you see the track and the siding that extends up from the water tank and round-house on the south side of the track?
A. Yes, sir.
Q. Had you noticed before that time whether there was any cars placed upon that siding at times?
A. I noticed one evening flats coming down that they ship coal in.

Q. Have you seen cars on that tank siding?
56 A. Yes, sir.
Q. You know what the siding is on the south side of the track?
A. Yes, sir.
Q. Now, you were saying you saw some cars come down from that siding once?
A. Yes, sir.
Q. Was that before this accident?
A. It was, sir.
Q. About how long before?
A. I could not tell you how long it was.
Q. Describe what you saw. Tell the the jury.
A. I saw the cars coming down and they come. I was out on the porch, and they come as far as the switch and they jumped the switch, and I went out and looked up the railroad and saw the school-boys coming, and I seen them stopping them right near Mrs. Madden's door—stopping the flats.
Q. Where were they finally stopped?
A. Right in front of Mrs. Madden's door.
Q. Where is that?
A. Right above our house there.
Q. Right west of your house?
A. West.
Q. On what track were they when they were stopped?
A. They were on the main track, I think.
Q. And whom did you see stop these cars?
A. Mr. Quinlan and Mr. Nolan.

Q. Dennis Quinlan and Mike Nolan?
57 A. Yes, sir.
Q. What became of the cars after that?

A. Why, they went back up to the switchman, and he came down and opened the switch and put the cars back.
Q. With the switch engine, did they?
A. Yes, sir.
Q. They were put back?
A. Yes, sir.
Q. How many were there of these cars?
A. I could not tell you how many cars there were; I didn't count them.
Q. About how long was that before this accident?
A. Indeed, I could not tell you how long before it was.
Q. Was it a month or so?
A. Not very long before it.
Q. Did you notice the cars when they first started?
A. No, sir; I didn't notice them until they were down into the switch.
Q. They were down about the switch moving?
A. Yes, sir.
Q. Was anybody on the cars?
A. No, sir.
Q. Was anybody on the tank track at the time that you saw?
A. No, sir; only the school-children were coming up from school.
Q. The school-children were coming along home from school?
A. Yes, sir.
Q. That was what time of the day?
58 A. It was in the evening.
Q. About 4 o'clock?
A. Yes, sir.

Cross-examination by Mr. BOYLE:

Q. You are unable to fix the time you saw these cars running down the track?
A. I was at my own house——
Q. The time—you can't fix the time?
A. No; I could not tell you the time exactly.
Q. The cars had passed out of the siding onto the main track?
A. Yes, sir.
Q. And were running down the main track, were they?
A. Yes, sir.
Q. They were going at a pretty good rate?
A. Well, they were going pretty quick.
Q. And these boys jumped on?
A. No; they didn't jump on at all; one of them catched the train behind and the other catched hold the side and stopped them.
Q. What year was that?
A. Indeed, I can't tell what year that was.
Q. About what years was it?
A. I never counted.
Q. Give about the year.
A. I can't tell.
Q. Was it two or three years ago?

A. Two or three years ago? Yes, indeed; more than that.
Q. How many years more?
59 A. It is over eight years ago.
Q. How much over eight years, do you think?
A. I could not tell you, indeed.
Q. Do you know how many cars there were?
A. No, sir; I don't know how many cars; I didn't count them.
Q. And they were going at a pretty good rate down the track?
A. Yes, sir.

The plaintiff, to further maintain the issues on his part, produced as a witness Mrs. ALICE CASTLETON, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. You are a daughter of Mrs. Quinn?
A. Yes, sir.
Q. And were you living at home in 1881, at the time of this accident?
A. Yes, sir.
Q. And were you at home on that night?
A. The night of the accident? Yes, sir.
Q. What was the first thing you heard with reference to it?
A. I heard the cars bump.
Q. When they struck?
A. When they struck; yes, sir.
Q. That was right opposite your house, was it?
A. Yes, sir.
Q. Now, had you noticed this circumstance that is spoken of by your mother, of the cars about that time coming down from
60 the side track?
A. Well, I was coming from school one evening and there was a little boy got on the cars; the cars started and two boys stopped them. The two cars started—one started and the other started after it.
Q. Where were those cars at that time?
A. They were on the siding.
Q. On this tank siding?
A. Yes, sir.
Q. That is the siding that is south of the main track?
A. Yes, sir; on the tank siding.
Q. And connected with the main track near the tank?
A. Yes, sir.
Q. State whether or not you saw these cars when they first started.
A. Yes, sir; I saw them when they first started.
Q. Q. Where were you at the time?
A. Why, I was a short distance from them.
Q. Coming home from school?
A. Coming home from school; yes, sir.
Q. Who was with you?

A. Miss Madden.

Q. You may state whether there was anybody about the cars at the time they started.

A. Why, there was a little boy.

Q. Where was he?

A. Why, when I saw him he was on, holding to the side of the car—a little boy about that high (indicating).

61 Q. About how old was that boy?

A. Well, I don't know; I should judge he would be about seven or eight years old; probably not that old.

Q. When the cars started where did they go?

A. They went out onto the main track.

Q. At the switch near the tank track?

A. Yes, sir.

Q. Near the water tank, I mean.

Q. Near the water tank; yes, sir.

Q. Then what became of them?

A. Why, they were stopped; two boys stopped them.

Q. Who were the boys that stopped them?

A. Mr. Quinlan and Mr. Nolan.

Q. Do you know whether the switch was open or closed at that time?

A. Well, I don't know much about railroads, so I don't know.

Q. Q. Can you tell how long this was before the Teehen accident?

A. Well, I could not tell you; I haven't any idea.

Q. Was it about that time?

A. It was right along about that time, as far as I can remember; it has been a good while; I was quite young; I don't remember just as well as I might if I was older.

Q. Have you ever noticed such a thing any other time of cars starting?

A. No; I did not.

Q. This boy you saw hanging on the side of the car that started was not one of the boys that stopped them?

A. No, sir.

62 Q. Where were those boys that stopped them?

A. Well, I think that one was in front of us, coming from school, and the other behind.

Q. How many boys were there at the cars at the time they started?

A. There was only one; I don't know whether he was trying to stop the cars or what he was trying to do.

Q. He was hanging to the side of the car?

A. He was hanging to the side of the car—a very small boy. I was afraid he was going to get killed.

Cross-examination by Mr. BOYLE:

Q. How old were you at this time?

A. Well, I think I was about 12 years old; I won't say for sure. I don' know how long since that is, but it is about eight years since

this Mr. Teehan was killed; I don't know; if it is, I was twelve years old.

Q. That is, you were about 12 years old when Mr. Teehan was killed; that is the way you calculate?

A. That is the way I calculate.

Q. You don't know whether those cars came out of the siding you saw there before or after the accident?

A. I think it was before.

Q. You were coming from school with Miss Madden?

A. Yes, sir.

Q. How old was Miss Madden at that time?

A. Indeed, I don't know; quite young, too, I guess.

Q. This small boy, you say, was on the cars or one of them on the siding, was he not?

63 A. No, he was not on the cars; he was on the side, holding to some kind—I don't know—some kind of an iron fixing.

Q. How long had you seen him?

A. When they started.

Q. You had not seen him before that?

A. No, sir.

Q. Your attention was first attracted to the cars when they started off the siding.

A. Yes, sir; when they started. I saw the cars going quite a distance before I saw him.

Q. This boy was hanging and riding on the cars?

A. He was hanging to the cars, and he was crying.

Q. How *how* long did you live there before that?

A. Why, since a little girl; I guess about twelve years.

Q. You were born there in the house your mother lived in?

A. Yes, sir.

Q. Have you lived there ever since?

A. Yes, sir. Have I lived there ever since?

Q. Yes.

A. Until about two months ago.

Q. When you became Mrs. Castleton, I suppose?

A. Yes, sir.

Q. Now, after these cars got onto the main track they were running eastward, were they?

A. Yes, sir.

Q. And that is where the two men, Mr. Quinlan and Mr. Nolan, got onto the cars and stopped them?

64 A. Yes, sir.

Q. They were going a pretty rapid rate on the main track?

A. Yes, sir; going pretty fast. I expect they would have went quite a distance if they hadn't been stopped.

Q. They would have passed your house?

A. Oh, no; about that far; I don't suppose they would run past. I don't know, indeed, for I never paid much attention to cars.

Q. But these two men got on and stopped the cars at that point?

A. Yes, sir.

Redirect examination:

Q. Do you know how the cars were taken back?

A. I could not say; I don't remember, but I saw the shifter come down there. They tried to put the cars back. They could not put them back, because they said the switch was locked and they could not open it, and that is all I know about it.

The plaintiff, to further maintain the issues on his part, produced as a witness JOSEPHINE MADDEN, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. You live in Alliance?

A. Yes, sir.

Q. Whereabouts in Alliance did you live in 1881?

A. I lived a short distance west from Mrs. Quinn's.

Q. At the side of the railroad track?

A. Yes, sir; on the south side of the track.

65 Q. And she lived on the north side?

A. On the north side.

Q. You lived about opposite her?

A. No, not opposite; up a little piece.

Q. A little further west?

A. Yes, sir.

Q. Do you remember the circumstances of the accident by which William Teehan was killed?

A. I don't remember much about them.

Q. Do you remember of the fact?

A. I remember of it, but I don't remember anything that occur-ed that night, because I was not there.

A. You were not there that evening?

A. No, sir.

Q. Were you with Mrs. Castleton at the time these cars she spoke of were running?

A. Yes, sir; I was.

Q. Can you tell about when that was with reference to this accident?

A. No; I could not say whether it was before or after; I would not be sure; it is so long ago I don't remember it.

Q. What is your best recollection about it?

A. Well, I don't know.

Q. Now, you may describe what you saw with reference to those cars.

A. I was coming from school with Mrs. Castleton when we saw a little boy hanging on the car, and he was trying, I guess, to stop the car; I could not say whether he was or not, but he was hanging there, and we saw the cars going down and pass out of the tank siding onto the main track.

66 Q. What finally became of them?

A. Why, Mr. Quinlan and Mr. Nolan stopped the cars.

Q. Then do you know how they were taken back?

A. I think they were taken back by the shifter that came down to take them back.

Q. How large was this boy you saw hanging on the side of the car?

A. He was just about that high (indicating).

Q. A little bit of a boy?

A. Yes, sir; a little bit of a boy.

Cross-examination by Mr. BOYLE:

Q. How old were you at the time you saw this occurrance?

A. I don't know how old I was at that time.

Q. Are you living in the same place now you lived then?

A. No, sir; we moved away five years ago,

Q. When did you move there?

A. We always lived there until we moved five years ago.

Q. This little boy you speak of was on the car on the siding when you first saw him?

A. Hanging on the car.

Q. And the car starting from the siding called your attention to it. What first attracted your attention to the car?

A. I saw the car moving.

Q. Anything else attract your attention to it?

A. The little boy on it.

Q. Why did he attract your attention? What was he doing?

A. Because he was hanging on the car.

67 Q. Was it an unusual thing to see a boy hanging on a car at that point?

A. Such a small boy, it was.

Q. On which side of the car was he hanging on?

A. On this side—the side we were going down on.

Q. Were you returning from school?

A. Yes, sir.

Q. What time in the evening was it?

A. Between 4 and 5 o'clock—after school; I could not say.

Q. The car passed onto the main track and it was there stopped by Quinlan and this other gentleman—what was his name?

A. Mike Nolan.

Redirect examination:

Q. Where did you say on the car the boy was hanging?

A. On the side of the car.

Q. About how many cars were there?

A. There were two.

By the COURT:

Q. Was it a flat car?

A. Well, I don't know what they called them; I guess they called them flat cars.

Q. It was not a box car?

A. No; it had not high sides on it; little sides on it, like they carry coal on.

By Mr. BOYLE:

Q. Did you notice whether there were steps like up on the stirrups hanging down on the side?

A. I could not say whether there were or not.

68 The plaintiff, to further maintain the issues on his part, produced as a witness DENNIS QUINLAN, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. You live in Alliance?

A. Yes, sir.

Q. Whereabout in Alliance?

A. Pretty near a mile east of Alliance.

Q. Did you live at that same place in 1881?

A. Yes, sir.

Q. Did you live — at the time of the accident by which Mr. Teehan was killed?

A. Yes, sir.

Q. Do you remember of that accident?

A. Yes, sir; I remember when it happened.

Q. Were you at the wreck that evening?

A. No, sir; I was there the next day, though.

Q. Do you remember the circumstance spoken of by these other witnesses of these cars starting down on the side track?

A. Yes, sir; I remember them.

Q. What was the first thing you saw with reference to them?

—. ——.

Q. What were you doing at the time?

A. I was walking along down the track the cars started over. I think I didn't see them when they first started. I was ahead of this one a little bit. When the cars came down as far as I was I got onto one of them and stopped the firt one. Mike Nolan got on the second one and stopped it.

69 Q. How did you stop them?

A. With the brake.

Q. Setting the brake?

A. Yes, sir.

Q. Where were they when you stopped them?

A. They were a good bit over the switch—past the switch.

Q. On what track were they?

A. They were on the main track?

Q. How far from Mrs. Quinn's house?

A. I could not say just how far; I suppose about four or five rail-lengths; maybe more.

Q. Pretty near down to her house?

A. Well, they were about half way between the house and the switch.

Q. Did you notice at that time in what condition the switch was?

A. No, sir; I did not notice.

Q. Do you know whether it was open or closed?

A. No; I would not know if it was open at that time—whether it was open or closed—I don't believe.

Q. Were you there when they put the cars back?

A. No, sir; I started back up-town. I was up-town yet when the shifter came down after the cars.

Q. And took them back?

A. Yes, sir; I don't know where he took them; they were gone when I came down again some place.

Q. Did you notify anybody about the cars?

—. I went up to, but somebody had got up before I did.

Q. How do you know that fact?

70 A. The shifter came down and took them up.

Q. Can you tell about when this was?

A. No, sir; could not say when it was.

Q. You may state whether it was about the time of the Teehan accident.

A. Well, it was some place around there pretty close.

Q. Are you able to state whether it was before or after?

A. No, sir; I could not say.

Q. But it was pretty close to that time?

A. Yes, sir.

Q. Did you notice this little boy that is spoken of as being on the side of the car?

A. No, sir.

Q. Did you see anybody about the tank siding?

A. No, sir; I did not.

Cross-examination by Mr. BOYLE:

Q. Did you see this boy afterwards?

A. I don't know as I ever did.

Q. Do you know who the boy was that was hanging on the cars?

A. No, sir.

Q. The first you saw of the cars they were moving eastward on the main track?

A. No; they were coming over the switch when I first saw them.

Q. Coming east?

A. Yes, sir.

Q. You got on the first one?

A. Yes, sir.

71 Q. The other man got on the second one?

A. Yes, sir.

Q. You set the brakes on the first one and stopped it and how long after you stopped it was the switcher there to take them back?

A. It was not very long. I don't suppose it was more than ten or fifteen minutes.

The plaintiff, to further maintain the issues on his part, produced as a witness JAMES CLARK, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. Where do you live?

A. I live in what is known as East Alliance.
Q. How long have you lived there?
A. I have lived there over twenty-two years.
Q. Whereabouts, with reference to the water tank that was there?
A. I should judge probably a thousand feet west of the tank.
Q. Then where were you about, with reference to this tank siding that used to be there?
A. Well, — would put me about 100 feet south of the tank siding.
Q. Right opposite it?
A. Yes, sir.
Q. What would there be between you- house and this siding?
A. I should judge 100 feet.
Q. Of the public highway?
72 A. Yes, sir; public road.
Q. You were on one side of the public road and this tank siding on the other?
A. Yes, sir.
Q. How long have you lived there?
A. Twenty-two years past.
Q. Do you remember the circumstance of William Teehan being killed there?
A. I do.
Q. Were you at the wreck that night?
A. I was.
Q. I will ask if you ever noticed cars being put on that tank siding.
A. Yes, sir.
Q. And before this time?
A. Yes, sir.
Q. How frequently were cars put there?
A. Oh, I suppose every day sometimes, likely.
Q. I will ask you if you ever noticed any cars that were placed there starting on the siding and moving without any force being applied to them.
A. At one time I did.
Q. Now, when was that with reference to the accident?
A. Of course I can't tell hardly. It may happen two or three years before the accident happened.
Q. It was some time before the accident happened?
A. Yes, sir.
73 Q. Now, what did you see?
A. I saw a car moving, and notified the watchman the car was moving and he had better stop it.
Q. What kind of a car was it?
A. What they call a flat car, gondola.
Q. It was standing alone?
A. Yes, sir; it was just one car by itself.
Q. Empty or loaded?
A. It was empty, I believe.
Q. You may state whether or not you saw it when it first started.

A. No, sir; it was moving when I saw it. I was going to my work when I saw it.

Q. Was anybody about there?

A. Not that I saw.

Q. State whether you were so situated if there had been anybody there as to see them.

A. I suppose if anybody had been there I would have seen them. I saw the car moving.

Q. What is the fact as to whether there was anybody there that could have started it?

A. I did not see anybody there.

Q. And where did the car go to?

A. Well, I don't know. I just notified the watchman the car was moving. Of course he ran down and, I suppose, stopped the car. I went on to my work; of course, I paid no attention to where it went.

Q. This, you say, was before this accident, but you are not
74 able to say how long?

A. Yes, sir.

Q. Has there been any change in the grade of that siding?

A. Not that I am aware of.

Q. Between that time and the time of the accident?

A. Not that I am aware of.

Q. How many cars were there on that siding at that time—at the time you saw this car start?

A. I only saw this one car was standing by itself.

Q. Only one by itself?

A. Yes, sir.

Q. And you saw nobody about it?

A. No, sir.

Cross-examination by Mr. BOYLE:

Q. How far were you from this car?

A. Well, probably I might have been ten feet, probably not quite so far.

Q. You were south of the car?

A. No; I was north of the car at the time I was going; I was going west.

Q. You were coming up town, were you?

A. I was going west then; the car was going east.

Q. You were going towards Alliance?

A. Yes, sir;

Q. Of course, you don't know whether there was any person on the other side of the car or not?

A. I do not.

75 Q. And you don't know whether the brakes were set on that car or not?

A. Well, I don't suppose the brakes were set or else the car would not be moving; I don't know; I notified Mr. McDonald, the switchman there.

Q. You never saw cars move out of that siding with the brakes set?

A. Not that I remember of.

Q. This was the only circumstance or instance you ever saw of cars moving out in that way?

A. That is the only one that I ever saw moving without somebody——

Q. Without somebody being connected with it?

A. Yes, sir.

Q. Now, that was a pretty important track, was it not, in the yard at Alliance?

A. I expect it was.

Q. It was used a great deal for storing cars?

A. Well, they have used it, of course, ever since it has been in there, I expect, for that purpose. A great many cars are put in there.

Q. A great many freight trains going East?

A. Yes, sir.

Q. And they take cars off the track, don't they?

A. Yes, sir.

Q. And that continued about all the time you lived there, didn't it?

A. Well, I could not say; I don't remember when that siding was put in, but it has been put in a number of years.

Q. And you have seen it how frequently—every day, in fact?

76 A. Yes, sir.

Q. Used at night, too?

A. I suppose so; yes, sir.

Q. By trains eastward taking cars off and putting cars on?

A. Yes, sir.

The plaintiff, to further maintain the issues on his part, produced as a witness Mr. VAN WERMER, who, being sworn, testified as follows:

By Mr. NORRIS:

Q. Where do you live?

A. East Alliance.

Q. Where do you live with reference to this tank siding?

A. I live about 400 feet just west of the tank siding, south side.

Q. On the south side of the road?

A. Yes, sir; the south side of the tank track.

Q. Your house is right opposite where the tank track was?

A. Yes, sir; right straight across the road.

Q. This tank siding has been taken away?

A. Yes, sir.

Q. There is no siding there at all?

A. No, sir.

Q. What is your business?

A. Engineer.

Q. On what road?

77 A. On the Pennsylvania road.

Q. How long have you been in the employ of that company?

A. Thirty-eight years.

Q. In what capacity have you worked for the company?

A. Engineer.

Q. All that time?

A. Yes, sir; locomotive engineer.

Q. What were you running in at the time of this Teehan accident?

A. I was running east with the other fast train.

Q. You were running the other fast train?

A. Yes, sir; the other fast train east that night.

Q. Where was your train to meet Teehan's train?

A. The meeting point was Lakeville. Generally the meeting point was Loudonville; always a little late. The meeting point was Lakeville when on time.

Q. Where were you when you first heard of this accident?

A. I was on the engine; the conductor came and told me.

Q. At what place?

A. At Crestline.

Q. Have you been an engineer about the Alliance yard for some time?

A. Yes, sir; going on over six years.

Q. And have you had occasion to run on this tank siding at times?

A. Yes, sir.

Q. And put cars there?

A. Yes, sir; every day.

Q. State what the character of the siding was.

A. Why, the siding is—you mean the length of it?

78 Q. Yes, and the grade.

A. Well, the grade averaged about thirty feet to the mile.

Q. What difficulty, if any, did you have in placing cars on there?

A. Nothing at all, only to put the brakes on; if you didn't put the brakes on it would run out. If you didn't put the brakes on they would run out on the main track, and sometimes a man would put sticks of wood under the wheels at the same time after the brakes was put on to be sure to keep the cars there.

Q. To make them stand?

A. Yes, sir.

Q. Suppose you had placed cars there without putting the brakes on at all?

—. They would run out.

Q. On the main track?

A. Yes, sir.

Q. You may state whether or not that was the condition of the siding in 1881 at the time of this accident—whether there was any change of grade or anything else.

A. No change at all. The grade was always that way until they took the siding away.

—. You think it was about thirty feet to the mile and is not any more than that?

A. Not any more than that. I don't think so.

Q. You never measured it?

A. No, sir; I never measured it.

Q. What appliances are in use by railroad companies and were in 1881 to prevent accidents from sidings that are on a grade
79 by cars running out on the main track? What way was in use by companies to prevent that?

A. Didn't have a way at all then, not that I seen at that time.

Q. Has there ever been a way?

A. Yes, sir.

Q. What is it?

A. That is since that.

Q. I don't refer to what was put in there, but what provision is made to prevent their running onto the main track.

A. I could not tell that.

Q. Did you ever know of any provision of that kind being used in the way of a cut-off switch?

A. They have different switches.

Q. Such as a cut-off switch? When they put in a switch describe what that is.

A. It is where there is a connection with the siding. It throws over by a lever—throws the rail out of place—so the car will run off the track.

Q. If the car run off the siding that way with a cut-off switch where would it go?

A. Run off the track.

Q. State whether it would blockade the main track.

A. No, sir; it would not.

Q. Do you know about what such a cut-off switch costs? Do railroads use such switches where they have side tracks at grade?

A. They do now.

80 Cross-examination by Mr. BOYLE:

Q. Were such switches in use by railroad companies generally at the time of this accident?

A. No, sir; I may be a little fast. I know of one, but I don't know just as it was used at that time. One that was put up west——

Q. Were they in use, except this one place, on the line of the Ft. Wayne road?

A. Just one place; that was west of Massillon.

Q. How many switches similarly constructed to this one on the line of the Ft. Wayne road did you run over? Do you know?

A. The Whorton.

Q. No: I mean similarly constructed to this switch on the grade running down to the main track?

A. I don't know of any other switch at that time that was constructed that way—what they call a safety switch.

Q. I don't mean the switch itself. There is siding similarly constructed along the Ft. Wayne road, is there not?

A. Yes, sir.
Q. At almost ever- station?
A. Yes, sir.
Q. The same grade the main track is on?
A. Yes, sir.
Q. It is done for the purpose of facilitating the switching of cars—to have the same grade as the main track?
A. Yes, sir.
Q. Did you ever know a car to run out of this siding with a brake set on one of the cars?
81 A. No, sir.
Q. How many cars would one brake hold back on that siding?
A. Why, it ought to hold about fourteen or fifteen.
Q. Have you know one brake to do that?
A. I have not known it. I am satisfied, though, it would. I know I have run in there with the engine several times and tried to move back the train and could not move it until I got the brake off.
Q. Describe to the jury a little the effect of the brake. Suppose you were pushing cars up that grade at Alliance and a brake would be set on the front end of your train—that is, the front end where you were pushing—your engine is behind pushing the cars up the hill—what would be the effect of one brake securely set?
A. It would stall the engine. The engine could not run a train up there.
Q. That is the effect of one brake?
A. Of one brake.
Q. Now, the grade of the main track continues some distance east of this switch, does it not?
A. Yes, sir.
Q. If a car was let out of that siding what distance would it run down the track?
A. A half a mile or three-quarters.
Q. The Alliance yard has been remodeled since this accident?
A. Yes, sir.
Q. And it is now considerably east—most of the tracks are
82 east of the station?
A. Of the station.
Q. Where it is called Rockhill farm crossing yard?
A. That is west of the station.
Q. And that has done away with the necessity of this tank track east of the yard?
A. Yes, sir. There ain't a track there that if we will put a car on any of them—on the siding—but they would run out with the brakes off—some seven or eight tracks on the same grade; just east of the station, understand.
Q. East of the station?
A. Yes, sir. There ain't a track but if you leave a car there without putting the brake on it will run out and run right down towards the tank track.

Q. About how far to where this tank track was?

A. Oh, it would be about twenty-five or thirty hundred feet—just east a way up.

Q. Now, a passenger train coming in from the east would pass these switches you speak of?

A. No, sir; they are above.

Q. The whole yard there at Alliance it constructed on the same grade, is it not?

A. Yes, sir.

Q. And cars starting up beyond Alliance there would continue the same grade away below Quinn's house, would they?

A. Yes, sir.

Q. Is it necessary for the engineer to know the grades of a road?

83 A. Yes, sir.

Objected to.

Q. Please explain to the jury how it is necessary.

Objected to.

The COURT: I don't think that is proper cross-examination.

Q. During your experience as an engineer there have you worked in the Alliance yard?

A. Running a shifting engine?

Q. Yes?

A. Yes, sir.

Q. And worked a great deal on this part of the track?

A. Yes, sir; every day and every night. When I was working there I put cars on there and took them off, backwards and forwards, maybe a half a dozen times at night and day; used it all the time nearly.

Q. It was a pretty important track, was it, in the operation of the railroad at that time?

A. Yes, sir.

Q. And at the time of this accident and before and since?

A. Yes, sir; until we got the new yard built, and then we didn't use it so much; didn't need it.

Q. It was a place to store cars for east-bound trains?

A. Yes, sir.

Redirect examination:

Q. Where was this other safety switch that was in use about that time?

84 A. That was west of Massillon, at a stone quar-y.

Q. On the same line of road?

A. Yes, sir.

Q. When was that put in there?

A. That was put in 1879 or 1880.

Q. Then others have been put in since then?

A. Just one that I know of.
Q. Where was that put in?
A. Just east of Alliance.
Q. At this tank siding?
A. At this tank siding.
Q. When was that put in?
A. Four or five years before this thing occur-ed—after this accident.

Objected to.

Q. When was this put in that you speak of at East Alliance?
A. Some four or five years ago.

The COURT: Do not name any place.

Q. State whether any other switch was put in anywhere along the line of the road.
A. I don't know of any since this safety switch was put in east. I think it was in thas siding.
Q. Then there was put in this siding another at another point still east of Alliance?
A. No, sir; it is the same one.

The COURT: The answer is competent for the purpose of showing that this switch has been put in use, but it is not competent
85 to show the point at which it was put in.

Q. When was it put in east of Alliance?
A. I just said four or five years ago; four or five; say four years.
Q. How are you able to fix a date, or are you just guessing at it?
A. I am guessing at it, but I think that is about the time.
Q. What were you doing at the time?
A. I was running in the yard, running a shifting engine.
Q. How long have you run in the yard?
A. Six years, going on seven.
Q. How long after you commenced to work there before it was put in there?
A. It must have been about two years ago at that rate; it was four years——
Q. About how long after after you commenced to work was it put in?
A. Four years.
Q. After you commenced to work?
A. In the yard.
Q. When did you commence to work in the yard, what year?
A. Well, this is 1890; figuring back, take six off that.
Q. Then, you think it was about 1884?
A. No; 1888.
Q. You were familiar with the road from Alliance to Crestline?
A. Yes, sir.
Q. Where were there any other sidings with as much of a grade as the grade on this siding?

A. East of Alliance?

86 *A.* No; between Alliance and Crestline.

A. Oh, there is a good many places.

Q. Where?

A. Orrville, Smithville——

Q. What is the grade at those places?

A. Oh, the grade at Orrville, I suppose, would run up to about 45 feet—that is, when I was on the division at that time, six years ago. At Smithville it would run up to 40 or 45; something like that.

Q. What kind of siding were those?

A. Sidings pretty much the same as what we are using. The cars would not stay in the siding without the brake- were set; they would run out.

By Mr. BOYLE:

Q. This switch was put in at Massillon, I understand?

A. Yes, sir; at a stone quar-y right west of Massillon, the first one I saw on this road.

Q. Mr. Teehan ran over the division east of Alliance?

A. He only ran to Alliance.

And thereupon the plaintiff rested.

87 The defendant, to maintain the issues to be maintained on his part, produced the following:

By agreement of counsel, Conductor Stager being absent, the following statement was by agreement read to the jury as the testimony of Mr. Stager:

That he was in the service of the Pennsylvania Company at the time of the accident complained of; that he acted in the capacity of freight conductor; that on the night of the accident he took certain cars off of the siding called the tank siding at Alliance in making up his train, which was an east-bound train; that he left certain cars on said siding, but that before leaving the same he securely set the brakes of said cars, so that it would be impossible for said cars to run out of said siding of their own gravity; that they could not be blown out of said siding, and that nothing short of the loosening of said brakes would have allowed said cars to pass out of said siding; that after he took the cars necessary for his train from the siding he closed the switch and locked it; that the main track eastward from the point of the switch is on a down grade or substantially the same degree as the siding, and that cars unlocked and passing out of said siding of their own gravity would run east a distance of a mile or a mile and a half; that said Stager proceeded eastward with his train to Beloit, where he was passed first by an excursion train from Pittsburgh and afterward by the limited train No. 5; that after his train left the switch and before the excursion train

88 reached Alliance any unfastened cars upon the siding would have had time to run to the Mahoning river, a distance of one mile and a half east of point of switch, and that they would have so run then if so left.

WILLIAM RECK, called on behalf of the defendant to maintain the issues on its part, being sworn, testified as follows:

By Mr. BOYLE:

Q. What is your business?
A. My business is yard-master at Alliance.
Q. In the employ of what company?
A. Pennsylvania Company.
Q. How long have you been yard-master at Alliance?
A. About three years—going on three years.
Q. What was your business before that?
A. Yard conductor.
Q. How long had you been yard conductor?
A. Well, in the neighborhood of ten years prior to that, I suppose.
Q. Do you recollect the accident at Alliance in which Mr. Teehan lost his life?
A. Yes, sir.
Q. Were you yard conductor on the night of that accident at Alliance?
A. Yes, sir.
Q. How soon after this accident did you learn of it?
A. Well, I heard the noise and that drawed my attention, knowing that No. 5 was about due; saw her coming and heard
89 the noise, and went immediately down to the wreck.
Q. How did you go to the wreck?
A. With an engine.
Q. What was the condition of the gondola cars that you found there; what was the situation?
A. There was, I think, in the neighborhood of sixteen or seventeen gondolas—empty gondolas. They were all out on the main track but the three hind ones. They were standing in what we term as the tank track, and there was either two or three of them completely demolished.
Q. What did you do after you got down to the wreck?
A. I then started my engine back for Megarge and assisted in caring for the men; ordered another engine down to clear the main track; notified the men it was not in my power to do so and notified the men to get another engine down at the west tank track.
Q. Who came down with that engine?
A. Mr. Megarge had charge of it.
Q. Was he conductor then?
A. Yes, sir.
Q. Were you there when Mr. Magarge reached there?
A. Yes, sir.
Q. Did you give him directions as to how he should get these gondola cars out?
A. No, I don't know as I gave him information as to how to do it, but we both determined on the quickest way. That was our business—to keep the main track clear and get it cleared as soon as possible.

90 Q. Did you observe the condition of the brakes on the gondola cars?

A. Not myself. I did not get on the cars, but I saw a man get on. That was one of Mr. Megarge's men—one of his brakemen.

Q. What was his name?

A. Charleton—Dennis Charleton.

Q. What did he do when — got on the cars?

A. He got on and I think pretty well at the east end of the gondolas that were in good shape, that we could handle, and I think—I am pretty positive—that he left off three brakes, and I think—pretty positive—four, although I would not want to testify as to the fourth, but I saw him let off three brakes.

Q. Then what did Mr. Megarge do after that?

A. Then Mr. Megarge took three or four cars with his engine at the west end, just below that switch; just where he could get the draught, and pulled in on the siding. He pulled up, throwed the switch, backed down, and pulled all that he could pull that was not wrecked in on the tank track.

Q. How did he get in behind the gondolas on the side track?

A. Had a cut-off on the west end of the tank track.

Q. Glance at this little sketch that I show you and state whether or not it was on this track marked cut-way, across over in this location. They are probably not exactly as they are on the ground.

A. The cut-off instead of coming in this way (indicating)—he had to run up in this shape (indicating) and back down onto the tank track. The cut-off goes from the main track. He gets in in this shape and gets into the tank track here, and then he backed

91 down here with his engine, coupled onto these cars, coupled on to what was in the wreck, and pulled in on the tank track after he had thrown the switch.

Q. What was the object of throwing the switch?

A. Well, the switch not being set for the tank track, I suppose he thought it advisable to have the switch setting in in proper shape so as to use the track. The switch is intended to be used. Of course he could have pulled in, no doubt, and the cars would have followed him in there. That is the object in the Whorton switch.

Q. How long have you known this switch before the accident—the side track?

A. Well, indeed I can't say as to that, but I think that a Wharton switch was put in there——

Q. I mean the side track itself.

A. Oh, the side track—it appears to me that track was in there, I think, when I first commenced railroading. I am not positive as to that.

By the COURT:

Q. How many years is that?

A. I have railroaded a little over seventeen years in the Alliance yard.

By Mr. BOYLE:

Q. State whether or not it was used generally and often by the railroad men.

A. Yes, sir.

Q. For what purpose?

92 A. For storing cars—east-bound cars.

Q. And trains east bound, would they receive cars off that siding, making up their trains?

A. Yes, sir.

Q. And was it your business as yard conductor to frequently work on the track?

A. Yes, sir.

Q. Throwing in cars?

A. I have worked on that track every night; I would be safe in saying every night nearly that I worked. I was working at night at the time.

Q. Placing cars in on the siding?

A. Yes, sir.

Q. State whether or not you ever knew of cars passing out of that siding with the brakes set upon them—any of the cars.

A. No, sir.

Q. Would one brake set upon the first car of, say, a string of twelve or fourteen hold the cars on that side track?

Objected to.

Q. Have you ever tried to keep cars on that side track by simply setting one brake, or is it your habit to set more than that?

A. We generally set more than that.

Q. Did you ever know of the cars, during your experience in that yard, running out where the brakes were set, as you state?

A. No, sir.

93 Q. Would it, in your opinion, be possible for them to do so?

Objected to.

The COURT: He has hardly qualified himself as yet.

Q. How often in the course of a week would you use that track to put cars on it and set brakes as you have stated?

A. Well, I would be safe in saying every night; every day.

Q. Would you have to do that more than once a day?

A. Yes, sir. I have made—I have filled the tank track up with cars, and maybe they would not stand there an hour until they was all gone, and then take down another draught. To give you a slight idea of about the way we used the tank track, we would make up trains; we would do our shifting in the yard and get, say, a through train; we set the cars that went to one destination, and then we would take them down there on that tank track for storage, and no doubt they would be the next train that was made up; they would be made up into a train and sent forward. Then we would by this time have another draught; would take them down to the

place, filling the tank track up again, and I have made as high as four and five trips down to the tank track.

Q. And setting a brake on the cars as you have stated would keep them from running out?

A. Yes, sir.

Q. Now, I will ask you, from your experience in connection with that side track, if it would be possible for the cars—say a string of twelve or fourteen cars—to leave the side track if the brakes were set as you usually set them there.

Objected to.

A. No, sir.

94 The COURT: I think that is competent.

Q. You are acquainted with the grade of the yard in Alliance?

A. Yes, sir.

Q. In what direction does it descend?

A. Eastward.

Q. And for what distance does it descend eastward?

A. Well, as near a point as I can give you, about the foot of the grade is the Mahoning bridge.

By the COURT:

Q. That is about a mile and a half, is it?

A. Yes, sir.

By Mr. BOYLE:

Q. What is the object of having the tracks in the yard on a grade of that character?

Q. Well, the object of getting the yard in that shape is for the purpose of doing shifting.

Q. Can the shifting be done more easily in a yard of that grade than on a level grade?

A. Yes, sir.

Q. Now, are you acquainted with the kind of switches that were used in side tracks in the yard about Alliance at the time of this accident?

A. Yes, sir.

Q. Do you know of any stub switches being used in any of the switches about Alliance at that time?

A. Well, the stub switches—that is, for main tracks, do you mean?

95 Q. No; for side tracks. I refer now specially to what is termed, I believe, a safety switch.

A. No, sir.

Q. That was a device that sprung up after this period, was it?

Objected to.

The COURT: It is competent to show whether it was in use or not.

Q. Was such a safety switch, to your knowledge, in use on the Pennsylvania system at that time?

A. No, sir.

Q. Were there other switches leading into the main track in the Alliance yard on the same grade with this tank track?

A. Well, yes; just about the same grade. The Alliance yard is about all the same grade.

Q. Do you remember Mr. Teehan when he was a freight engineer on the line?

A. Yes, sir.

Q. Do you remember how long he was a freight engineer?

A. Well, I think that Mr. Teehan was running when I first commenced railroading; I am not positive about that, but I think he was.

Q. What proportion of the freight trains, east-bound trains, that were made up in Alliance would take cars off this tank track before this accident?

A. Well, I don't know hardly; but there was hardly a run went out of the yard but what took cars off the tank track and filled up their trains.

Q. That was so prior to, say, a year before this accident?

96 A. Yes, sir.

Q. And continued for some years prior to that?

A. Yes, sir.

Q. Mr. Teehan was a freight engineer, leading from Alliance to Pittsburgh, was he?

A. Until he came onto a passenger; yes, sir.

Cross-examination by Mr. SANDERSON:

Q. This tank track was about twelve hundred feet long, was it?

A. Well, yes; in that neighborhood.

Q. And it ascended towards the west?

A. Yes, sir.

Q. About how far was it at the west end from the main track?

A. I don't know that I understand that.

Q. How far was it at the western termination of the tank track—the west end of it—from the main track off to one side?

A. Well, I suppose it was in the neighborhood of four to six feet.

Q. And it ran then substantially parallel with the main track all the way down—twelve hundred feet?

A. Yes, sir.

Q. Until it came to a place where it sloped off into the main track?

A. Yes, sir.

Q. And then for this distance the distance between the tracks substantially was six to eight feet?

A. Yes, sir; in that neighborhood; good clearing distance.

Q. Substantially parallel and on the same grade?

A. Just the same.

97 Q. Exactly the same grade?

A. Just the same.

Q. Now, at the west end of this track there was a cut-off, so as to afford communication between the main track and the side track, was there?

A. Yes, sir.

Q. That is the object of that?

A. No; that was not exactly the object of the cut-off.

Q. That was one of them?

A. One of them. The main object was getting into the round-house or out.

Q. Another object was to get from the main track onto this side track and from the side track onto the main track at that end?

A. Well, it was used for that purpose.

Q. I say that was one object.

A. That was one object.

Q. And to get to the round-house was another. Now, about how far was this switch to the termination of the side track going eastward from the station in Alliance, the station building?

A. Well, it is in the neighborhood of twelve to fifteen hundred feet, I suppose, as near as I could get to it.

Q. The side track itself is twelve hundred feet. How near does the west end extend to the station-house?

A. Well, in fact the track runs clear up by the station-house; you could connect in with switches.

Q. Then the station, I understand, is perhaps twelve hundred feet from the switch?

98 A. Yes, sir; somewheres near to that from the west end of the swit-h—that is, the west end of the tank track.

Q. When I say switch I don't mean the side track. I mean the switch appliance, where it opens and lets you into the main track near Quinn's house. How far is that point where the switch is located back to the depot?

A. Oh, well, that is taking in the tank track and the——

Q. What is the distance? I don't care what it takes in. About what is the distance?

A. Well, it is over a half a mile, I suppose, from the station.

Q. How far from the station did this accident occur—this collision?

A. Well, from a half to three-quarters of a mile.

Q. And within the yard at Alliance?

A. Well, it is—there was no yard limit.

Q. How?

A. It was not considered a yard when we go below the tank track.

Q. I understand, but it was a part of the place, territory, or yard for the making up of trains, taking out cars. It was within that?

A. Yes, sir; you would have to use that part of the main track to get from the tank.

Q. That is the way the storage track is used?

A. Yes, sir.

Q. You did not give, in answer to Mr. Boyle's question, the grade of that track and side tracks. You said it was a descending grade and towards the east. About how much to the mile?

A. Well, from thirty to thirty-five feet, I suppose.

99 Q. What means have you of knowing?

A. Well, from our records of the surveyors.

Q. That is what I want to know. Have you examined to see what the real grade is?

A. Well, I have saw the figures; yes, sir.

Q. A matter about which there is no doubt at all. Of course the profile of the road shows it.

A. I believe the average measure of the road is, from the Mahoning to Alliance—I think it stand- forty-two feet, but this one point of the grade is not quite so heavy as it is a little further west.

Q. Do you know, then, what the grade is really along the length of this side track; this tank track?

A. To the best of my judgment, about thirty-five feet.

Q. I don't want your judgment. I want to know the exact thing, if I can find out.

A. I can't give it to you exactly.

Q. It is an exact matter. It can be determined by the records in the engineer's office, of course. Have you made an examination to know what it is?

A. Only by seeing the figures.

Q. Have you seen the figures as to the grade of the tank track?

A. Only from what that would be on an average from one point to another.

Q. I don't want the average. I want to know the descent of the tank track alone.

A. I can't give it to you.

100 Q. You have seen the figures for that?

A. Not exactly for the tank track.

Q. If you have not you are not able to state what they are?

A. I can't give you them. I never saw them exactly for the tank track.

Q. Now, that descent, you say, is regular, gradual, and uniform from one end of the tank track to the other?

A. It is, about.

Q. You say it is an advantage to a railroad company to have its track and side tracks built on that kind of a grade?

A. Yes, sir; on a descending grade.

Q. You think that is so?

A. I do.

Q. Is it not the object and purpose of a railroad company always to get its tracks as far as possible on a level?

A. No, sir; I think not.

Q. Have you ever had anything to *the* do with the construction of a railroad?

A. No, sir.

Q. Your opinion is they like to have side tracks and everything at a descending grade in one direction?

A. Not exactly side track; only for yard purposes.

Q. I mean for yard purposes. That a yard is better on a descending grade in one direction than it would be at a level?

A. Yes, sir.

Q. And it is an advantage to a railroad company to have a side track so constructed that a car would not stand unless the
101 brake is set so as to hold it from running onto the main track?

A. That is in getting the work done.

Q. Is it any advantage in holding cars?

A. The cars are supposed to be securely held by brakes.

Q. They are supposed to be. Do you think it is an advantage to have the track so that if you do not have the cars tightly secured by brak-s or where if some person sees fit to unloosen the brak-s or some person forgets to set them properly that they will run out on the main track in the way of trains?

A. We do not forget to set the brakes in a place of that kind, not railroad men.

Q. Somebody let the cars out that night, didn't they? These cars went out some way?

A. I don't think it was the hands of the railroad company.

Q. I say they got out.

A. Yes, sir; undoubtedly.

Q. Don't you think it would have been an advantage to have had these cars standing on a level track so that they would not have run out if somebody had loosened the brakes?

A. I think if the cars had been left alone they would have stayed there.

Q. I am not asking that. Do you think it is an advantage to have a railroad and side tracks so constructed that if the brakes are loosened intentionally or somebody forgets to set them that they will run out on the main track in front of trains—a limited express, for instance?

102 A. I think it is an advantage in having the yard in that shape to get their work done.

Q. I am asking the other question; answer the question I ask you. I asked you if you thought it was an advantage to a railroad company to have its side tracks so constructed that if the brakes are not properly set or if some person should loosen those brakes and give the car a little touch they would run out in front of the limited express. Would that be an advantage?

A. I don't suppose it would be any advantage to have them run out and damage their property.

Q. Would it not be better, in your judgment, to have the track so constructed they would not run out?

A. No; not for yard work.

Q. Then you make the whole construction subservient to yard work?

A. Yes, sir.

Q. If they are so constructed they require greater care, do they not, in securing the cars than if they are on the level?

A. Yes, sir.

Q. It requires considerable of care, does it not?

A. Yes, sir.

Q. To prevent them from running out?
A. Yes, sir.
Q. Cars set on that side track or tank track, if the brakes are not set, would, of their own gravity, run out?
A. Not if the brakes are set.
Q. I say if the brakes are not set.
103 A. If the brakes are not set they would run out.
Q. What kind of a night was the night of this accident?
A. A wet, disagreeable night.
Q. A stormy night?
A. Well, it was not storming very much.
Q. Blowing?
A. Some; yes, sir.
Q. From the west?
A. I can't just tell you which way the wind was.
Q. Snowing and storming very severely?
A. I don't think it snowed any that night.
Q. Probably not snowing but raining?
A. Raining; yes, sir.
Q. Now, do you remember whether it was raining or storming when you went down there that night?
A. It was raining when I went down there.
Q. Was it dark?
A. Yes, sir.
Q. Very dark?
A. Dark as it usually is in September along about 10 o'clock at night.
Q. No lights in that part of the town, I suppose?
A. No, sir.
Q. Any men working there?
A. No; I think not.
Q. Were there men on duty at the station-house?
A. Well, I could not say as to that.
104 Q. Are there not always men on duty there when that limited express arrives?
A. There is men; yes, sir; baggage master and men around the hotels.
Q. Station agent?
A. Station agent? No, sir; he was not there.
Q. Anybody there at all to sell tickets?
A. No, sir; they don't sell them for that train.
Q. There are other trains during the night—passenger trains?
A. Not until later; the ticket agent was around for No. 1 that night, I believe.
Q. You say when you got down there you saw how many cars of those that ran down?
A. Sixteen, I think it was; sixteen or seventeen; I could not state exactly the number.
Q. How many of them were outside, east of the switch—I mean the switch appliance?
A. Well, all but three or four was out on the main track.

Q. And you say you saw Mr. Carleton get onto those cars and loosen some brakes—three?

A. Three or four; I am not positive about four.

Q. Do you know whether they were completely set or not?

A. No, sir.

Q. Did you make any examination?

A. I didn't get up onto the cars; no, sir.

Q. What do you mean by this opening the brakes?

A. Why, where the brake is set the brakemen gets up and
105 lets off the brake.

Q. The wheel turns around?

A. Yes, sir.

Q. That is what you saw?

A. Yes, sir.

Q. You don't know how tightly they were set or how much of an effort it took to loosen them?

A. No; I could not determine on that.

Q. That, of course, you could not tell about?

A. No, sir.

Q. Do you know anything about the remainder of the cars as to the brakes? Make any examination of them?

A. No, sir.

Q. In what capacity were you acting there?

A. Yard conductor.

Q. Did you set brakes yourself sometimes?

A. Yes, sir.

Q. Or was that the duty of the brakemen usually?

A. It is an ordinary circumstance that a man that is running a car there, as a general thing, is next to his engine in shifting on that tank track.

Q. Who is next to the engine?

A. The conductor, most generally; and there is a habit we always form ourselves, we would get up and set two or three brakes on the front end, and the brakemen on the rear end would set maybe that many, enough to secure them safely.

106 Q. Now, did you ever know of a time when there were sixteen or seventeen cars standing on that track with all the brakes set, in your life—personal knowledge of it?

A. I have very frequently went onto that tank track when I was braking and found nearly all of the brakes set.

Q. I have asked you if there was ever a time in the world when you examined a train standing there, a lot of freight cars, numbering seventeen, that had all the brakes set.

A. Well, I could not say as to whether they was all set. The biggest part of them were set, by—I suppose some outside parties got up——

Q. Were cars frequently put on there without the brakes being set in composing a part of a train made of a lot of cars—for instance, seventeen?

A. No, sir; they would never——

Q. You say there has been time- when you found nearly all the brakes set?

A. Yes, sir.

Q. Were there times when you found some that were not set?

A. Certainly; yes, sir.

Q. That is what you mean——

A. But they were in the middle of the train.

Q. I know. I don't care where they are. Sometimes you found cars there where all the brakes were not set?

A. Yes, sir.

Q. That occur-ed very frequently?

A. Well, in the middle of a draught; yes, sir.

107 Q. Now, at all times of night nearly there would be cars taken out of there?

A. There would; yes, sir.

Q. That is, quite a number of freight trains would move from that place during the night?

A. Yes, sir.

Q. And they would take off cars?

A. Yes, sir.

Q. It might be very possible it would be the cars with the brakes set that were taken off?

A. Well——

Q. And the others left, if that is the way it was done.

A. It would hardly be impossible.

Q. How was that? That might occur, might it not?

A. That could be done; yes, sir.

Q. Were cars sometimes taken out of the tank track the other way?

A. Never taken out that way; no, sir.

Q. Always backed up and took them out from the east end?

A. At the east end; yes, sir.

Q. Very shortly before this accident occurred there were some cars taken off that track, were there not?

A. Well, yes.

Q. Now, is it possible that those cars had their brakes set and those in the rear of them did not have them set?

A. More likely the gondolas that were put in there were put in there by themselves.

Q. These were all gondolas that were there?

A. Yes, sir; this freight was put in afterwards.

108 Q. Now, how do you know but that the cars that had the brakes set were all taken out and those that were left there had no brakes set? Did it frequently occur that cars were there without brakes being set on them?

A. Not as a general thing.

Q. I am not speaking as a general thing. How do you know that was not the case at that time?

A. I could not say as to that at all.

Redirect examination:

Q. Do you know the fact that an excursion train from Pittsburgh arrived at Alliance that night?
A. Yes, sir.
Q. How long was that before this accident?
A. Well, it was from thirty to forty minutes. I could not just say.
Q. Prior to the accident?
A. Yes, sir.

By Mr. SANDERSON:

Q. In speaking of the use of these safety concerns you said they were not in use on that road.
A. Safety switches?
A. Yes, sir.
A. Not at that time.
Q. Of a character that has been put in there since?
A. Not at that time; they were not in use.
Q. How long after that were they used—that is, to come to your knowledge?
109 A. To the best of my knowledge I think it was about four years ago.
Q. Did you know anything about one of these switches or appliances being put in near Massillon?
A. No, sir; I did not.
Q. Do you know what other railroads used safety switches?
A. Well, indeed, I could not say.
Q. You are only speaking of that particular company?
A. Yes, sir.
Q. You had no knowledge of what was in general use other places?
A. Only along our line.
Q. Was there on your line?
A. No, sir.

By Mr. BOYLE:

Q. Would this excursion train that came there thirty or forty minutes before this accident have to pass over the same track that these gondolas cars were on and where the collision occurred?
A. Yes, sir.
Q. Pass over exactly the same spot where the accident occurred—the same track?
A. Yes, sir.

110 WILLIAM MEGARGE, called on behalf of the defendant to maintain the issues on its part, being sworn, testified as follows:

By Mr. BOYLE:

Q. What is your business?
A. Yard conductor.

Q. In the employ of what company?
A. Pennsylvania Company.
Q. And how long have you been yard conductor?
A. Been yard conductor about eleven years.
Q. On what portion of the line are you employed and have you been employed for the last nine or ten years?
A. The west part of Alliance yard.
Q. Do you recollect the occurrence of the accident in which Mr. Teehan was killed?
A. Yes, sir.
Q. Where were you the night of the accident?
A. I was about twenty rods west of the passenger depot when it happened.
Q. When did you first receive word of the accident and from whom?
A. First saw No. 5 coming; saw her head-light, and then heard the racket—the noise.
Q. Did you go down to the wreck?
A. Yes, sir.
Q. How did you go there?
A. Took my engine and went right down south main track.
Q. What condition did you find the gondola cars in when you got there?
111 A. I found a string of gondolas standing out on the main track reaching, part of them, onto the main and part of them onto this tank track.
Q. Did you take step- to get the gondola cars away from the engine, the wreck?
A. Yes, sir; as soon as I came down and seen what the wreck was like.
Q. From whom did you receive your instructions?
A. Well, as much from myself as anybody.
Q. You realized the situation?
A. Yes, sir.
Q. That these gondolas must be pulled back?
A. Must be cleared up.
Q. What was the first step towards doing that work?
A. The first step toward doing that I sent my engine west to the cut-off that came in on the tank track, at the west end of it, and it came down on the tank track to the gondolas, where they reached beyond the main track, and coupled the engine on, coupled three of the cars from the west end, and pulled in on the tank track—that is, far enough so that I could throw the switch to the main track—and then backed out; got the balance of the empty gondolas and pulled them in onto the tank track.
Q. Did you find any brakes set on the gondola cars?
A. Yes, sir.
Q. How many brakes and where were they?
A. There were three brakes set at the east end of the draught—that is, there were two cars all broken to pieces, and on the fourth,

fifth, — sixth car, I believe, from the east end there was a
112 brake set.

By the COURT:

Q. The first three were all smashed?

A. The first two were broken. It was the third, fourth, fifth, sixth, counting the two that was broke.

By Mr. BOYLE:

Q. Anyway, you found three brakes set on the train?

A. Yes, sir.

Q. Did you loosen those brakes?

A. My brakeman did.

Q. You directed your brakeman to loosen them?

A. I did.

Q. Who was that?

A. Dennis Charleton.

Q. Where is he now?

A. I believe he is running a train on the Alliance, Lake Erie and Southern road.

Q. You pulled these gondola cars back onto the siding?

A. Yes, sir.

Q. Did you ever have any experience with placing cars on that siding?

A. Yes, sir.

Q. Would cars stay on the siding if the brakes were unfastened?

A. No, sir.

Q. Would they start down the side track of their own gravity immediately if they were not fastened?

A. Yes, sir. Put a draught of cars in there and stop them, set brakes enough to hold them there, and then let the brakes
113 off and they will start right off.

Q. But if you put a draught of cars in there and set the brakes on two or three cars, state whether or not it was possible for them to move out of the side track.

Objected to.

Q. Did you ever see cars move out of that siding during your experience there in the Alliance yard with two or three brakes set on the east end of the train?

A. No, sir; never did.

Q. What would be the effect as to holding back, say, a string of twelve or fourteen cars of setting two or three brakes in the front end of the string?

A. If there was twelve or fifteen cars put in there and stopped, why two or three brakes would hold them there—that is, they would have to be good brakes. There is poor ones and good ones right along on cars.

Q. You may state whether or not the grade of the main track is the same as the siding.

A. Yes, sir; there is no difference substantially.

Q. That leads down eastward, does it?

A. Yes, sir.

Q. And if a car was let out of the siding with the brakes loosened where would it stop?

A. Well, it would run a half a mile east of the tank-track switch, anyway; probably further. The grade runs very near to the Mahoning river there before it raises. It would go clean down about there.

114 Cross-examination by Mr. SANDERSON:

Q. Did you ever see seventeen cars standing on that side track with two brakes set at one end of the lot?

A. Yes, sir.

Q. That the cars did not move?

A. Yes, sir.

Q. How often have you seen it?

A. I have seen it frequently; put them there myself.

Q. Just seventeen?

A. Well, seventeen and—yes; I have seen as high as twenty-two.

Q. With three brakes only set?

A. Three brakes only set—that is, on the east end of the train.

Q. Were your men there accustomed to putting as high as eighteen and twenty cars on that track with three brakes only?

A. No, sir; they would set two or three on the east end and probably that many on the west end.

Q. Were they accustomed to do that?

A. Yes, sir.

Q. Left all the rest unset?

A. Yes, sir; it was not necessary to set the brakes on all of them to hold them there.

Q. Your men employed there were accustomed to do that; that was an every-day occurrence?

A. They were accustomed to set brakes enough on them to keep them there.

Q. It was not your custom in moving about with those cars and leaving them on that track to set all the brakes?

115 A. No, sir.

Q. That you did not think necessary at all?

A. No, sir; it was not necessary.

Q. Just set as many as you thought would be sufficient to hold the train?

A. Yes, sir.

Q. If there was only four or five you would only set two brakes?

A. Two brakes would be enough to hold them?

Q. And if there were sixteen you would set——

A. Set enough to hold them there; about three in the east and probably that many on the west end of them.

Q. You have spoken about the brakes being set on three of those cars on the east end from the two that were smashed up.

A. Yes, sir.

Q. Did you notice whether any brakes were set on any of the other cars?

A. No, sir.

Q. Do you know whether there was or not?

A. There was no brake set on the west end.

Q. Don't you know there was not?

A. There was not.

Q. You don't know whether the brakes were set on the two that were smashed up?

A. No, sir.

Q. They were at the east end?

A. They were at the east end.

116 Q. Commencing at the third car?

A. I think so.

Q. At the third car the brakes were set?

A. Yes, sir.

Q. Do you know how tightly they were set?

A. Well, set up quite tight.

Q. How do you know?

A. I examined them.

Q. You examined the brakes set to see how they were set?

A. Yes, sir.

Q. Get onto the car?

A. Yes, sir—no, sir.

Q. How did you examine them?

A. Went along down the side; went down the side of the train to see whether there was any brakes set.

Q. Now, could any man tell how tightly they were set except the man that took hold of them?

A. Railroad men could tell.

Q. You could?

A. Yes, sir.

Q. Did you see how much the chain was wound up?

A. I seen it was wound up to shut the shoes up tight enough on them.

Q. Could you — how tightly the shoes set against the wheel by looking?

A. You can't tell that exactly.

Q. Is it possible for a man looking at a brake passing along a car to tell how tightly it is set?

117 A. He could tell whether it was set tight enough to hold.

Q. Could he tell how tightly it was set?

A. No, sir; I don't suppose he could.

Q. You say it would take good brakes on three of those cars and them well set to hold them?

A. Yes, sir; I say so.

Q. It would be a little doubtful even then whether in a blast of wind or with some little push or jar they would then stand?

A. They would stand there with three brakes on them.

Q. Would you leave them in that way and set no more brakes?

A. I would set enough to keep them there.

Q. You would be sure to have enough to keep them? You would not be exactly certain if there were only three set on a train of seventeen cars?

A. Well, we would push that many cars up in there and set the brakes on——

Q. You would not be sure about the brakes on three cars holding a train of seventeen cars, would you?

A. Yes; I would.

Q. And you would leave them that way?

A. I would if——

Q. Take the chances?

A. Yes, sir; if they would stand there until I got away from them they would stay.

Q. Is that the ordinary test—to see whether they would stand until you got out of sight of them?

A. Yes, sir.

Q. And if they did that you would leave them?

118 A. Yes, sir.

Q. That is the way the business is done, is it?

A. That is the way the business—if they stand there.

Q. They might stand until you got out of sight and somebody come along and give them a push and send them along?

A. No, sir.

Q. If you just had them set so that they would stand, of course, it would require some degree of force to start them?

A. Yes, sir; if the cars are stopped and the brakes set on them the brakes would have to be released before they would start.

Q. Do you mean that exactly?

A. Yes, sir.

Q. They could not be set so that a little force or blow upon them would start them?

A. There might something come in behind them like an engine shoving against them.

Q. I am speaking of something behind them.

A. An engine could shove them out, probably; something like that.

Q. Now, Mr. Megarge, you have been railroading a good while?

A. Yes, sir.

Q. You have set a good many brakes?

A. Yes, sir.

Q. Could you not have set those brakes on that train—three of them—so they would stand on the track until you probably got out of sight, and then could you not have come back and with one hand have moved the train with those brakes set that way?

A. No, sir.

119 Q. This tank track extended westerly from the station-house, did it not, some distance—extended beyond the station-house westward?

A. This tank track?

Q. Yes.

A. No, sir.

Q. The track proper is what I am speaking about. The end of the tank track proper is east of the station-house, is it not?

A. Yes, sir.

Q. The termination of it?

A. Yes, sir.

Q. About how far?

A. In the neighborhood of half a mile from the depot.

Q. Before you strike the tank track?

Q. Before you strike the east end of the tank track.

A. I mean the west end.

A. Oh, it is probably forty rods.

Q. And then there is a cut-off switch in there?

A. Yes, sir.

Q. Is there any way by which cars can be extended beyond up from the west end of the tank track?

A. Yes, sir; I believe you can throw the switch, or could at that time, to let cars down through there.

Q. Down there from above—that is, from west to the station-house?

A. No; you could not get cars down from west of the station-house until you cross in by the south main track.

Q. Well, cars could go in from the south main track—from the main track near the station—could they not?

120 A. Yes, sir; about forty rod- east of the station.

Q. What was going on that night at that end of the track and about that place?

A. I could not tell you; I was not working down at that end of the yard at that time.

Q. Were there any cars up there?

A. Not that I know of.

Q. Any cars loaded with coal or otherwise?

A. Not that I know of; there may have been coal cars up there, but I didn't notice.

Q. Whereabouts did they unload coal when it was unloaded there?

A. They unloaded coal just west of this cut-off that went in on the west end of the tank track.

Q. How are the cars placed on that at that point?

A. They are placed in there on a short track that was built there and kept a purpose for them coal cars.

Q. And that connect- directly with the tank track?

A. It could by throwing an extra switch.

Q. I say that connect-.

A. Yes, sir.

Q. Of course, when a track connects you always have to have a switch?

A. Yes, sir.

Q. And cars could come from the place where they unload coal right through onto the tank track and go on eastward down to where the other cars were?

121 A. Could throw a switch east of them.

Q. Do you know whether there was coal unloaded there that day or that evening or night?

A. No, sir.

Q. Do you know whether there was or not?

A. I could not swear to that, because I was not on that end of the yard.

Q. Was there not coal unloaded there every day?

A. Yes, sir; coal up there.

Q. And at different times during the day—unloading coal there every day?

A. Pretty much of the time they are coaling up engines there.

Q. Now, when those cars were unloaded of coal where did they let the cars go to?

A. They generally dropped them down until they got the track full.

Q. Down where?

A. Down to the east end of the coal track.

Q. Well, did they let them down on the tank track sometimes?

A. Very seldon let them out these.

Q. Did they sometimes?

A. Not that I ever recollect of.

Q. Never recollect of ever seeing them dropped down there?

A. No, sir; never did.

Q. How many cars would there be there sometimes?

A. Well, it would hold six to eight empty cars.

Q. If there were more than that where did they put them?

122 A. They would have to order the shifter down there and have to take them out.

Q. You saw you saw No. 5 coming. Where were you?

A. A little west of the depot.

Q. You heard the crash. How loud a crash was it?

A. Oh, it sounded something like a pile of lumber falling over.

W. A. ROUTSON, called on behalf of defendant to maintain the issues on its part, being sworn, testified as follows:

By Mr. SQUIRE:

Q. You live where?

A. Wooster.

Q. What is your occupation?

A. Train-master.

Q. Whereabouts?

A. Well, my division now extends from Alliance to Crestline, including the Massillon branch.

Q. In 1881, at the time of this accident, what were your duties?

A. Well, I was train-master then.

Q. And covering what locality?

A. Eastern division, Pittsburgh to Crestline.

Q. How soon after the accident did you visit the scene of the accident?

A. Well, at the time of the accident I lived in Alliance. I was called up by telephone, and I presume it was probably three-quarters of an hour until I got there.

123 Q. And you may state who had charge from that time on, if any one, of investigating the cause of the accident.

A. Well, I presume that I was the only one that had that in charge.

Q. You may state what you did and what you learned.

Objected to.

A. It is a long story.

Q. State what you did first.

A. Of course, that night there was no investigation—too soon and early. The first thing was to take care of the two men and get the track clear, which I cleared. Then after that, of course, followed the investigation. Do you want the whole story?

Q. Yes, sir.

Mr. SANDERSON: No, sir.

Mr. SQUIRE: Whatever you did?

A. I did a good deal.

Q. We want it, as far as it is competent.

A. Of course, to make that investigation thorough we had to have detectives to help and assist. A detective was sent to me from Chicago. My first impression *were* that——

Objected to.

Q. State what you did.

A. I first put a man to work in Alliance, in what was called Irish Town—in what we call Irish Town, the eastern part, down in the neighborhood of the accident—and kept him there—well, probably, two months; failed to get anything satisfactory, and in the meantime I received a letter from out agency in Palestine asking me to go——

124 Objected to.

Q. You can't state the contents of the letter? Skip the contents and state what they did. You received the letter?

A. Well, I received a letter. I went to Palestine; saw the agent. He directed me——

Mr. NORRIS: Never mind what he said.

A. I went to see a blacksmith in Palestine. We had offered a reward of $500 for the arrest of the parties—persons—that wrecked the train or let the gondolas out. The blacksmith asked me then

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Mr. NORRIS: Never mind that.

A. I offered him $500 if he would——

Mr. SANDERSON: The conversation is objected to.

A. I offered a reward to him.

Q. State whom you saw and what was done then.

A. I saw the blacksmith.

Q. And who else you saw.

A. The next person I saw in connection with the blacksmith was a boy.

Q. Who brought the boy to you?

A. The blacksmith.

Q. Tell us where this Palestine is.

A. Well, Palestine is about thirty-five miles, I think, from Alliance, east. I don't know positively the distance.

Q. About thirty-five miles?

A. Yes, sir; more or less.

Q. Who else did you see after seeing the boy—what else was done?

125 A. After seeing the boy I took the detective to Palestine and saw the boy again; got what we thought——

Mr. NORRIS: Never mind what you thought.

A. Well, we got sufficient evidence——

Mr. NORRIS: Never mind about the evidence.

A. We got enough evidence.

Mr. NORRIS: We ask the court to exclude that.

Q. Skip what you got and state what you next did.

A. The next thing that I did was to send the detective to Beaver Falls and get acquainted at Beaver Falls.

Mr. NORRIS: Never mind that. You don't know who he got acquainted with.

A. I saw him with him. I know he was with him.

Mr. SQUIRE: Who was he with?

A. The father of the boy and brother and brother-in-law of the boy.

Q. Then what was the next thing done?

A. The detective went to work in the coal bank with these gentlemen, and after working there a reasonable length of time, getting sufficiently well acquainted with the families all around——

Q. About how long a time?

A. I think about—well, two months; maybe a little over. His last trip with any of the family was to Pittsburgh, with the brother, and from that place he came to see me. We went to Pittsburgh together; communicated with the manager of the road, and from there to Salem, got out the papers, and had these gentlemen arrested.

Q. Who were they?

126 A. I can't think of the names. I have got the whole busines- in the office; I don't remember.

Q. Lewis one of them?

A. Lewis; that is it; the Lewis family.

Q. Schonassy?

A. Schonassy was not with that party. That was a later case.

Q. How many of them did you have arrested?

A. There were three—four, including the boy—and eventually Schonassy came in and made the fifth one, but up to that time I don't think he was in.

Q. Whereabouts were those men arrested?

A. They were arrested at Beaver Falls and taken from there—well, I don't know where they were jailed, whether they were brought into Ohio or not. I presume they were brought to Youngstown.

Q. At the hearing at Beaver Falls, if you know, who appeared as witnesses?

A. The detective.

Q. Who else?

A. I think he was the only man.

Q. Whereabouts, if any place, did the boy appear?

A. Well, I think the boy turned up in Youngstown, too, the next place. That was where we sunk.

Q. Now, before getting the detective at all, what investigation did you make about the place of the accident?

A. Well, I made the ordinary investigation as to who placed the cars in and whether the cars had been secured by setting the
127 brakes, and made the usual report in regard to the accident; took up the wreck, kept an account of all that, and that closed up that part of it.

Q. Were you present at the time of the hearing in this case before the justice of the peace?

A. I was not; no, sir.

Cross-examination by Mr. NORRIS:

Q. The result of this detective work and all this running back and forth, all these people were acquitted of the offense charged?

Objected to.

A. They were.

Q. Where was this detective from?

A. Chicago.

Q. How much of a reward was offered?

A. $500.

Q. Some of these people afterwards sued the company for false imprisonment, didn't they?

A. Schonassy, I believe, did. I don't know whether it was for false imprisonment. As I understand the case, he brought suit against one of the legal departments for bringing suit without instructions. That is my idea of it—that he overstepped his authority. I know that was it.

Q. That is, Taggart made affidavit against him and he sued him in connection with the company for false imprisonment and malicious prosecution. How long after the accident before you went down?

128 A. Before I was on the ground?

A. Yes, sir.

A. Well, just as soon as I got dressed I got there, after being called by telephone.

Q. Had they removed the gondolas that were standing on the track at that time?

A. Yes, sir; they had pulled them back—in.

Q. Before you got there?

A. Yes, sir.

Q. This was a bad, stormy night, was it not?

A. Something like last night; pretty nearly like it.

Q. Raining, was it?

A. Raining to- much to be out and not hard enough to stay in—just about that way.

Q. Had you been the evening before in the neighborhood of or about this tank track?

A. No, sir; not that I remember. Very likely I was down past that place.

Q. This tank track connected with the main track at its west end up about the round-house?

A. It connected into the cross-over switch.

Q. And there also was a switch there that ran alongside where you were heaving out your coal?

A. Coal bins.

Q. That connected with the tank track?

A. Connected by a switch; yes, sir.

Q. How long was that track?

129 A. Oh, I should presume that track would hold ten or fifteen cars; probably twelve cars.

Q. That was in use a good deal of the time by cars standing there to be unloaded into the coal bins?

A. We made the delivery of our coal there by locomotives, and we used it day and night.

Q. Coalmen were there unloading coal day and night?

A. Yes, sir.

Q. Was that the same incline of the tank track? Was that descent eastward?

A. Yes, sir; oh, yes.

Q. And when they would unload a car and send another one down where would the empty one go—down toward the switch on the tank track?

A. Well, it would naturally go that way; yes, sir.

Q. Was that the way they were in the habit of sending them?

A. They would send them that way if they needed to move the car, but, as a rule, didn't have to do much of that.

Q. If they did move a car that is where they would send it?

A. They would drop it east. I don't know that they dropped it on the tank track. It is possible they dropped it down so they would catch it on the cross-over.

Q. Catch it there and it went down that way?

A. Yes, sir; down that way.

Q. If they should drop one down and not stop it it might run down the tank track?

A. It would be owing to how the switch was setting; if the switch was set it would run that way.

130 Q. Sometimes run over some switches?

A. Not that would be there.

Q. If it was set that way it would run down onto the side track?
A. Without a doubt.
Q. Do you know who was working heaving coal that night?
A. No, sir.
Q. What kind of men were usually employed in that work?
A. Well, I think—I don't know—people that live in Alliance; men that work by day's work.
Q. Men that would not be very skillful in their business?
A. That depends a good deal, of course, whether they had anything else to do.
Q. Was there anybody there overseeing these men?
A. They have a foreman; yes, sir.
Q. Was there any watchman kept at the east end of the tank track on this night?
A. Not that I know of; I*n* think not, sir.

Redirect examination:

Q. You say Schonessy sued somebody for malicious arrest?
A. Yes, sir.
Q. Arrested without probable cause or something of that kind?
A. Yes, sir.
Q. Did Schonessy ever recover anything as the result of that lawsuit?
A. I understand the case was dismissed.
Q. Never pushed it to trial?
A. It went to trial.
Q. It went to trial and a verdict for Mr. Taggart?
131 A. That is my understanding. I don't see how they could get any other way under the circumstances.
Q. Did you ever know of any coal cars being put over onto this tank track from the coal track?
A. No coal cars.
Q. From the coal track beyond onto the tank track?
A. No, sir; I did not. It is my understanding of the coal work as fast as they——

Objected to.

Q. You may state whether you ever knew of any cars get- up up from the coal track into the tank track.
A. No, sir.
Q. Do you know of any watchman being kept down in that part of the yard?
A. No, sir; I do not. There are months when we keep track watchmen out, but, of course, September would not be called a severe month and it would not be necessary to keep a watchman out.
Q. What is it that makes you keep a watchman out?
A. Extreme cold weather.
Q. To watch for broken rails?
A. Yes, sir; and during very heavy storms and during heavy rainfalls—something of that kind—and that would be only for a night or two.

Q. And in cold weather it is liable to be for some time?

A. Yes, sir; during the winter months they keep watchmen on the tracks.

132 Q. At that time would any more watchmen be kept at this point than any other point?

A. No, sir.

By Mr. NORRIS:

Q. There was some difficulty in making cars stand on this tank track without setting the brakes pretty tight?

A. Cars would have to have the brakes set to stand there.

Q. And pretty tight?

A. Well, I don't know whether a brake set tight is as effective as a brake set ordinarily tight. If set very tight might slide the wheel.

Q. Would it be more apt if it was a wet night to slide on the track if the brake was set tight?

A. Yes, sir.

Q. If the train got started down and the wheels slid you think it would go the same distance?

A. Well, if the rail was wet and the brakes set tight enough to slide the wheels they would go further than they would if the brakes was set ordinarily tight.

Q. They would?

A. Yes, sir.

Q. Suppose cars setting there on this side track—for instance, an empty coal car—should come down and bump against them and start them would the wheels slide on the rails, do you think?

A. I don't think that would start them.

Q. Do you suppose it would start them if the brakes are not set very tight?

A. If they would be set loose enough so as to not have any

133 friction on the wheels.

Q. Well, if it had some friction?

A. Well, I don't know.

Q. Would not a wet night, a wet wheel, a wet track, make it slip easier?

A. If it was set loose?

Q. Yes, sir; make it run easier.

A. If you had the brakes set tight the car would move quicker than if set ordinarily tight.

Q. Suppose it is set ordinarily tight, would it not slip easier in a wet track where the brake is set against the wheel?

A. I don't know that. There is always more or less sand taken up by the wheel when it is wet.

Q. But the brake would shove that up as it came around so it would get between the brake and the wheel, as it would stick to the wheel?

A. It might take up some of it, but not all of it.

Q. When the track and brake is wet it is harder to handle cars and to handle a train that it is when it is dry?

A. Yes, sir; that is so.

Q. It is harder to make them stop, harder to start them, and harder to control them in any way?

A. A light rain on a rail is worse than a heavy rain; makes it moist on top. An engine will slide quicker on a moist rail than she will on a very wet one.

134 DENNIS CHARLETON, called on behalf of the defendant to maintain the issues on its part, being sworn, testified as follows:

By Mr. BOYLE:

Q. In what business are you engaged?

A. Railroading.

Q. On what railroad?

A. Alliance, Lake Erie & Southern.

Q. In the service of what company were you engaged in 1881?

A. The Pennsylvania Company.

Q. In what capacity were you engaged at that time?

A. Braking in the yards.

Q. Do you recollect the occurrance of the accident in the Alliance yard in which Mr. Teehan was killed?

A. Yes, sir.

Q. State whether or not you were at the wreck the night of the accident.

A. Yes, sir; shortly after it happened.

Q. How did you go to the wreck?

A. Went down on a shifting engine.

Q. Now, state what condition of things you found there in respect to the gondola cars.

A. There were supposed to be fourteen of them—thirteen or fourteen.

Q. Were they empty or loaded?

A. Empties.

Q. Empty gondola cars?

A. Yes, sir.

Q. What was the condition of the first two cars next to
135 the engine—passenger engine?

A. Well, they were broke up very badly—split in two—broke up badly.

Q. Now, did you go to work to clear up the wreck, assist in clearing up the wreck, after you got there?

A. No, not exactly taking up the wreck; we buckled onto the cars and pulled them out of the way.

Q. In doing that work what one did you first take?

A. We coupled the engine to the west end of the cars, and that is the opposite end, not the passenger engine that run into them, and pulled them back.

Q. Did you find any brakes set on the gondola cars?

A. Yes, sir; three of them.

Q. What do you say about brakes on the gondola cars?

A. Three brakes set; yes, sir.

Q. Did you have much experience in the Alliance yard in setting cars on that siding?

A. No; never had any.

Q. Are you acquainted with the grade of the track?

A. No, not much; our work was in the west end of the yard.

Q. How were those brakes set on the gondola cars?

A. They were set ordinary.

Q. How do you mean by ordinary?

A. Well, they was set sufficient to hold the cars, I should think, any place.

Q. And the brakes were set upon what cars in this string of cars?

A. Well, I don't know that I can just state what cars they
136 were; along about the middle of them somewhere.

Q. Then with the engine you back into the rear of the cars and pulled them out, as I understand?

A. Yes, sir; up into the yard.

Cross-examination by Mr. SANDERSON:

Q. You loosened the brakes yourself?

A. What is that?

Q. How did you come to know about the brakes?

A. I was braking there, sir, and hooked onto them, and, of course, it was my business to see that the brakes were let off.

Q. What brakes did you loosen?

A. Well, brakes on those cars; I could not just state what car they was on.

Q. About the middle, you think, of the train?

A. Yes, sir.

Q. And there were fourteen cars, you say—supposed to be? What do you mean by that; do you know how many cars there were?

A. Well, no; I don't just remember how many.

Q. What do you mean by saying "supposed to be"? Do you know anything about it personally?

A. Nothing more than there was twelve or fourteen gondolas run out of there.

Q. You don't know how many were run out on the main track?

A. Not exactly; no.

Q. You don't know how many were broken up?

A. No; I don't remember now how many.

Q. You saw them broken up?

137 A. I saw them after they were broke; yes, sir.

Q. And the first two next to the east end of the lot of cars were broken, were they not?

A. Yes, sir.

Q. Off the track?

A. Some of them were off the track; yes, sir.

Q. You came down on the shifter and came into the west of that tank track, did you?

A. Yes, sir.

Q. Getting in on that tank track?

A. The tank track?
Q. Yes.
A. No; came down the main track.
Q. Then you could not get onto the tank track?
A. Yes; for that is the way on the tank track.
Q. How did you hitch onto the cars?
A. They were out on the main track.
Q. All of them?
A. Yes, sir.
Q. Was not any standing on the tank track?
A. Not that I remember of.
Q. You hitched onto the rear end of the lot of cars by coming down on the main track from the west?
A. Yes, sir.
Q. So they must necessarily have all been out on the main track?
A. Why, I think so; yes, sir.
Q. What was the first thing you did when you get down there?
138 A. Well, about the first thing we did was to look over the wreck.
Q. What was the first thing you did?
A. Well, coupled the engine onto gondolas.
Q. Who was the engineer?
A. I don't remember; I think it was Mr. Graham, though.
Q. You coupled the engine onto the most westerly car. What did you do next?
A. Well, we pulled them back.
Q. What did you do about loosening the brakes?
A. Oh, I just—as soon as I coupled the engine I got onto the train—on those cars; looked over them and let the brakes off.
Q. Which brakes did you loosen?
A. That is what I can't tell you, which ones; it was some brakes on those cars.
Q. How do you know that?
A. I know it because I did it, I suppose.
Q. Suppose; that is what I thought you meant; now, that is all there is of it; you suppose you loosened those brakes?
A. Well, I know I loosened some.
Q. Because somebody told you they were set?
A. I know I left them off.
Q. You can't tell on what part of the train you loosened them on?
A. No, sir.
Q. Whether it was the most westerly car or the most easterly one?
A. No, sir.
Q. Were brakes set on the cars on the most easterly end?
139 A. I can't say.
Q. You didn't loosen any there, did you?
A. I don't know about that. I loosened three brakes on that train.

Q. And you don't know where they were?
A. No.
Q. Whether it was the west end or east end?
A. I don't know.
Q. You don't know when they were set either?
A. No, sir.
Q. Whether they were set that night after the wreck and before you got there or anything about it?
A. I do not.
Q. You said in answer to Mr. Boyle a moment ago you thought the brakes you loosened were about the middle of these cars?
A. Yes, sir.
Q. Was anybody else loosening brakes but yourself?
A. Not that I know of.
Q. Was anybody else on those cars to loosen them?
A. No; not on those cars.
Q. All the brakes loosened were loosened by you. Now, you suppose they were set ordinarily tight?
A. Yes, sir.
Q. What makes you think that?
A. You can set a brake tight or loose, you know?
Q. Yes; I guess you can if you want to. The question is how those were set?
A. They were set ordinarily tight.
140 Q. Did you examine to see—pay any attention?
A. I can tell by letting them off.
Q. Do you remember about how they were when you let them off?
A. Well, I just say they were set ordinary.
Q. When was your attention first called to it?
A. Which?
Q. To the fact that you let off the brakes there that night.
A. No; the time they had the case in Youngstown there.
Q. Did you move any cars on that track before or assist in doing it?
A. No, sir.
Q. The night before that or the day before?
A. No, sir.
Q. Had you ever done it before?
A. No, sir.
Q. Never worked on the tank track?
A. Well, yes; we occasionally would go down there and set in a train on that track?
Q. Can you tell how many brakes you set each time?
A. No; I cannot.
Q. This was never called to your attention until you were brought to Youngstown, and, of course, you haven't thought of it since then, I suppose, much?
A. Well, no; not much.
Q. Now, I would like to have you explain a little better what you

mean by ordinary tight. You said ordinary tight, so as to hold the train.

A. Yes, sir; I would think they would hold a train any place.

Q. It is a mere matter of opinion?

141 A. Yes, sir.

Q. Did you ever experiment to see how many brakes you would have to set on a train of fourteen or fifteen or sixteen cars to hold them?

A. No, sir.

Q. You are entirely ignorant on that subject?

A. No, sir.

Q. You are not in a position to give an opinion as to how many brakes would have to be set to hold those cars?

A. No.

NATHANIEL HARRINGTON, called on behalf of the defendant to maintain the issues on its part, being sworn, testified as follows:

By Mr. BOYLE:

Q. What is your business?

A. I am yard master at present.

Q. Where?

A. Alliance yard.

Q. In the employ of the Pennsylvania Company?

A. Yes, sir.

Q. How long have you been in the employ of the Pennsylvania Co.?

A. Since August some time in 1865; I don't just recollect the date.

Q. What has been your employment in the service during those years?

A. Well, I broke awhile. My first employment was a brakeman on the west end of the line of the road, and then I came into

142 the yard and was employed as switchmen, and from there I went to braking, and from braking I went to conductor, and from conductor to yard master—that is, assistant yard master; I have been there since.

Q. How long have you been working in and about the Alliance yard?

A. I think it is about twenty-two years; about that time.

Q. Are you acquainted with all the tracks connected with the Alliance yard?

A. Yes, sir.

Q. And are you familiar with what is called the tank track?

A. Yes, sir.

Q. State whether or not that was an important track in the operation of that yard.

A. Yes, sir; it was at that time.

Q. What use was made of it?

A. We used it, as a general thing, for our gondolas that were shifted from the coal track, making up the coal train. Going east in the

morning, occasionally we would use it for freight—that is, east-bound freight—but never for west-bound or anything of that kind.

Q. It was used principally for trains east-bound?

A. Yes, sir.

Q. Making up the trains?

A. Yes, sir.

Q. East-bound trains take cars off that track?

A. Yes, sir; occasionally.

Q. That track was on the same grade as the main track, was it?

A. Yes, sir.

143 Q. Had it been substantially on the same grade since you-knowledge of it?

A. Yes, sir.

Q. How long had that track been there before 1881, do you know?

A. I could not just say how long.

Q. Now, in the yard business there how was it as to placing cars upon that track in the operation of the railroad there in the yard?

A. We would come down and take our coal cars—that is, the empty coal cars—from the coal yard and take them down the main track and take them up into the tank track.

Q. How often during the day would you use that track?

A. Generally two, sometimes three, times a day.

Q. And that continued all the time until the track was taken out?

A. Yes, sir.

Q. Now, state what was your practice in setting brakes upon cars when placing them upon that siding.

A. Generally set from four to five at the east end in order so if anything should happen that they would not drop out or anything of that kind.

Q. Now, from your experience in connection with that tank track, placing cars upon it, state whether or not two or three brakes set upon the east of a string of gondola cars, of, say, thirteen, fourteen, or fifteen—state whether or not those three brakes would have been sufficient to hold those cars in on that siding under any circumstances.

A. Two brakes properly applied will hold them there with-

144 out they have been tampered with or something of that kind.

Q. You were not at the wreck, as I understand?

A. No, sir; I didn't know anything of it until the next morning.

Cross-examination.

By Mr. Norris:

Q. If two would hold them what did you set four or five for?

A. Generally done that in order to make it safe.

Q. To make it safe?

A. To make it safer.

Q. You didn't think two were safe?

A. Yes, sir; I thought two would be safe. We generally made it a rule to set from three to four and five brakes.

Q. Did you ever leave cars there with two brakes set on fourteen or fifteen cars?

A. Oh, yes; we have done it.

Q. Done it frequently?

A. Well, I could not just say how often.

Q. Did you ever leave them with one?

A. Not that I know of.

Q. Then you have no invariable rule; sometimes you set more brakes and sometimes less?

A. Well, we generally set enough to make it safe.

Q. Answer the question. You sometimes set a few and sometimes more, just as it happened?

A. Yes, sir.

Q. What rule were you governed by in that respect?

A. Well, one brake will hold them, as far as that is concerned.

Q. What did you set four or five for?

145 A. Simply because we were there and had time to do it. We have left them with one brake and with two and sometimes three.

Q. You have left fourteen or fifteen cars there with one brake set?

A. Yes, sir.

Q. Did that frequently?

A. Yes, sir; it has been done frequently.

Q. You thought that would hold them?

A. Yes, sir.

Q. How many cars did you ever put on there at one time?

A. I think we had as high as twenty-one and twenty-two.

Q. Have one brake on them?

A. No, sir; generally set more brakes when we had that amount of cars.

Q. You did sometimes with one?

A. Not when we had that amount of cars; generally set two and three, sometimes four.

Q. When was it you set four and five?

A. It was as just circumstances would happen.

Q. What were the circumstances to happen?

A. If we had plenty of time while the engine is going would set sometimes three and four and five.

Q. Then it depended upon the amount of time as to the number of brakes you would set?

A. No; not exactly that.

Q. What did it depend on?

A. And because we were to set them.

Q. You were there always when *when* you put any cars in,

146 were you not?

A. Yes, sir.

Q. What were the circumstances that changed your rules of setting first one and then sometimes four and five?

A. We had no rules for setting any amount of brakes.

Q. Then it depended on just as it happened and about the amount of time you had?

A. We always had plenty of time to leave the cars in safely; that was our judgment and it was our privilege to use it that way.

Q. Any man taking out a train and putting cars in there would change it?

A. I don't know anything about others.

Q. You don't know anything about what others did?

A. No, sir.

Q. All you know about is what you did when you put cars in there?

A. Yes, sir.

Q. You sometimes put blocks under them, didn't you?

A. No, sir.

Q. Did you ever know them to be blocked up—sticks of wood put in front of them?

A. No, sir.

Q. You never knew of anything of that kind?

A. No, sir.

Q. This track ran up to somewhere near your coal bins, didn't it?

A. Yes, sir.

Q. The track from the coal bins connected with it up there?

A. No, sir.

147 Q. Didn't?

A. Not without you throwed the switch.

Q. Well, this side track didn't connect with the main track without you throwed the switches?

A. No, sir; it didn't. I understand you, if it connected directly with the coal track.

Q. What do you mean by connection?

A. Why, straight track.

Q. I don't mean on the same track. Didn't you have this side track connected with the main track?

A. Yes, sir.

Q. Well, if I would ask you that you would have said yes?

A. Certainly.

Q. Then it was not the same track, was it?

A. No, sir.

Q. Well, then, this track connected with the track that ran past the coal bins?

A. Yes, sir; by throwing a switch connected it, of course.

Q. Didn't it connect in the same way that the tank track connected with the main track by a switch?

A. Yes, sir.

Q. What is the difference between the connection of the two except, perhaps, in the nature of the switch? Is there anything?

A. Well, no. I didn't understand you properly. I supposed you meant if it was straight track through to the coal track.

Q. I didn't ask you if that track ran straight across to the coal bins, did I?

148 A. I don't think you did. It may have been I misunderstood you.

Q. Then this track did connect with the track that ran past the coal bins?

A. Yes, sir.

Q. About how far were the coal bins from the point of connection?

A. I think it was about seven or eight car lengths.

Q. That track about on the same grade?

A. Just about; yes, sir.

Q. Which way was loaded cars put in from?

A. Put in from the west end.

Q. As they were unloaded, when the heavers were through with them they let them drop down east?

A. They dropped down as far as the switch cross- over——

Q. Did they drop down east?

A. Yes, sir.

Q. Let them drop east just as far as the switch?

—. ——.

Q. If the switch was open they could go through?

A. Yes, if they could go upon it.

Q. They had still room enough to go still further down the tank track?

A. Yes, sir.

Q. All the same grade. They could go down there some distance if they wanted to, could they not?

A. Yes, sir; they could run clear out on to the main track.

Q. If they got started once?

A. If they were not stopped.

149 Q. And if they got started down this track and were not stopped they would run down against any cars on this side track?

A. Yes, sir.

Q. And this tank track was a place where you stored these empty cars from the coal bins?

A. Yes, sir.

Q. Were the coal-heavers working night and day?

A. Yes, sir.

Q. Unloading coal?

A. Yes, sir.

Q. And letting those cars out and others coming in?

A. Dropping them down as far as the cross-over switch.

Q. Just answer: letting them down in front of the coal bins?

A. Yes, sir.

Q. Then, how did you get you- engine in to take them out?

A. Ran in on the cross-over.

Q. Go in on the tank track?

A. No, sir.

Q. Cross over from where?

A. From below, taking our empties out. You see?

Q. Yes, the empties from the coal——

A. From where they coal up the engines; pull them up and throw them out and throw them down the main track.

Q. Which way?

A. From the west.

Q. From the west end of the coal track?

A. Yes, sir; as a general thing.

150 Q. How many men were working there heaving coal usually?

A. Well, I could not say.

Q. You didn't pay much attention to the way they did business?

A. No, sir.

Q. When they let these cars down from the coal bins, who let them down, the coal-heavers?

A. I could not tell you.

Q. You don't know anything about that?

A. No, sir. I never seen them drop any.

Q. You don't know how they did that?

A. No, sir.

Q. You say you had no rule about securing cars on that side track?

A. We had a rule of leaving them, what we thought was perfectly safe.

Q. But — as to the number of brakes?

A. No, sir.

Q. Nor any orders about that?

A. No, sir.

Q. All left to you——

A. Our own judgment.

Q. Your own judgment and discretion. If one thought one was sufficient, and no more, it was governed entirely by his views in the matter?

A. Yes, sir.

Redirect examination:

Q. How many switches do you say were between the coal track and tank track?

151 A. Three.

Q. And those would all have — be thrown, would they, before the car would drop down from the coal track onto the tank track?

A. Yes, sir.

Q. If those switches were not thrown the car would be thrown from the track, would it?

A. Yes, sir.

Q. Those switches were not Whorton switches, like in the main track?

A. No; they were stub switches.

By Mr. NORRIS:

Q. How many switches do you say?
A. Three.
Q. What did the first one connect with?
A. Connected with where the engines came down to get the coal.
Q. That track crossed this?
A. Yes, sir.
Q. And this track continued right across these other tracks and connected with the tank track?
A. Yes, sir.

By Mr. BOYLE:

Q. The coal track was further to the south than the tank track?
A. Yes, sir.
Q. Was not on a continuous line with the tank track?
A. No, sir.
Q. And it took three switches to reach the tank track?
A. Yes, sir.

By Mr. NORRIS:

152 Q. That is, you cross three other tracks to get to it?
A. Yes, sir.

And thereupon the defendant rested, and no rebuttal evidence was offered, and the foregoing was all the evidence offered in the case.

Whereupon the defendant requested the court to give to the jury the following charges:

1. The petition filed in this case alleges but two grounds of negligence on the part of the defendant company:

1st. That the side track called the "tank track" was wrongfully constructed on a grade, so that cars left thereon could pass out of said siding by gravity onto the main track.

2nd. That by reason of such construction of track the defendant was negligent in not providing a watchman at that point to prevent accidents happening, by reason of care, passing from the siding onto the main track.

2. That the plaintiff is confined in this action to the acts of negligence which he has set forth in his petition, and if you shall find that the action alleged was caused by the negligence of the defendant in some other manner distinct from these allegations of negligence the plaintiff cannot recover.

3. In the construction of the siding in question the defend-
153 ant had a perfect right to locate it in such manner as to most easily conform to the contour of the ground over which the siding was built and with reference to the use to which it was placed. If the general contour of the ground of the main track and yard of the defendant at Alliance sloped to the east and the business of the company in that yard could be more easily handled by having those

tracks upon such a grade, it cannot be said to be negligence to construct the siding on the grade in question.

4. Even though the jury believed that if the tank siding had been provided with a safety switch the gondola cars would not have run out on the main track so as to obstruct it, this would not entitle the plaintiff to recover.

5. Even though the jury believed that if the tank siding had been provided with a guard watchman, and such guard or watchman would have prevented the accident, that would not entitle the plaintiff to recover.

6. The defendant was under no legal obligation to maintain a guard or watchman at the tank siding.

7. The defendant was not bound to change the manner of using its side tracks no*t* to adopt the most approved ways or appliances in business, and if Teehan *knowing* or *having* ample means of knowing, from long continued employment, the way and manner the tank siding was used, its grade, and the usual and customary method of leaving and fastening cars thereon, and continued in the employment without complaint, and if from such use and manner of use and grade he was subjected to risks of accident, he
154 is presumed to have assumed such risks, and if he was killed thereby the plaintiff cannot recover.

8. If Teehan knew or had ample means of knowing, from long continued employment, that there was no guard or watchman employed at this tank siding, and if from the want of such guard or watchman he was subjected to risks of accident, he is presumed to have assumed such risks, and if his death was caused thereby the plaintiff cannot recover.

9. If Teehan knew or had such means of knowledge that it can be reasonably be said that he ought to have known of the hazards of the work upon which he was engaged as the business was conducted by the defendant, and yet continued in the employment without complaint and was killed while so engaged, the plaintiff cannot maintain an action against the defendant therefor, although there was a safer way of conducting the business, which, if adopted, might have prevented the injury.

10. It appears from the uncontradicted testimony in this case that for a long time prior to September 28th, 1881, that it was the custom of the defendant to use the tank siding without a safety switch or guard or watchman and to leave cars standing thereon. If such custom was dangerous and liable to result in such cars coming out on the main track and to cause collisions, Teehan will be presumed to have known such danger and liability, and, having continued in the employment without complaint, is presumed to have voluntarily assumed the risk of accident from such cause.

155 11. It is claimed on behalf of the defendant that the cars in question came out upon the main track by reason of the malicious act of third persons. In determining this question you are to take into consideration the undisputed testimony as follows:

1st. That Stager, the conductor of the last freight train which took

cars from that siding, testified that he set several brakes on the cars remaining on the siding.

2nd. That the cars would not run out of the siding of their own gravity when two or three brakes were well set.

3rd. That if brakes were not fastened the cars would start immediately and run far beyond the point where the accident occurred.

4th. That at least forty minutes after Stager left the siding *siding* an excursion train passed safely over the point where the accident subsequently happened on the same track on which the limited was running.

5th. That several brakes were set on the gondola cars when examined after the wreck.

12. If you shall determine from the evidence that these cars were placed upon the main track by some malicious persons for the purpose of wrecking the limited train, and such malicious act would not, in the light of all the circumstances, have reasonably been anticipated by the defendant company, — such malicious act was the proximate cause of the accident, then the plaintiff cannot recover in this action.

13. Included in the risks assumed by Teehan in his employment were those originating from the negligent acts and omissions
156 of his fellow-servants in the employment of the company, and among those who are classed as such co-employés were employés of other trains, the coal-heavers at the coal sheds, switchmen in the Alliance yard.

14. And if you shall find that the cars in question came out upon the main track by reason of the negligence of co-employés, the defendant is not liable.

157 And thereupon the court charged the jury as follows:

In the United States Circuit Court, Northern District of Ohio.

WILLIAM TEEHAN'S ADMINISTRATOR
vs.
THE PENNSYLVANIA COMPANY.

The plaintiff sues to recover from the defendant ten thousand dollars as damages on account of collision, which resulted in the death of the intestate, and from alleged negligent acts of defendant's agents.

On the night of the 28th of September, 1881, the plaintiff's intestate was a locomotive engineer in charge of one of defendant's engines drawing its fast limited express train westward from Pittsburgh. When approaching the station at Alliance, Ohio, and while running at a fast rate of speed the engine collided with great force with a number of gondola flat cars which stood on defendant's main track. The engine was badly wrecked and the engineer, William Teehan, was fatally injured. The negligence which plaintiff alleges caused the collision was that the defendant so constructed its side track where this accident occurred "that any cars placed thereon would of their own gravity, and especially if the slightest force was

applied to start them, run down onto and block up and obstruct the main track; that defendant permitted it to so remain and permitted and required its employees to use said side track and to place and leave cars standing thereon, and to use the same for all the purposes of a side track, and negligently omitted to keep a person at
158 said side track at that point to watch the same and see that the main track was kept clear from obstruction; that the dangerous character of that siding required a watchman to see that its main track was kept clear for the safe passage of its fast passenger trains; that on the night of the accident defendant required its employees to use and that they did use the said side track for the purpose of standing cars thereon; that no person was left in charge thereof; that owing to the unskilful way said side track was constructed said cars started from their places, ran down on the main track, and there obstructed the same, so that said William Teehan, in charge of the engine of the fast limited train, without any fault on his part, ran into said cars and was injured thereby and died from such injuries.

More briefly expressed, the plaintiff charges substantially two acts of negligence:

1st. That the side track in question was so unskillfully constructed as to cause cars stored thereon to run out onto the main track of their own gravity; and

2nd. That defendant failed to keep a watchman at that place to watch the same and see that the main track was kept clear from obstructions.

The plaintiff must satisfy you by a fair preponderance of proof that these acts of negligence were perpetrated by defendant before he can recover, and you are confined in you- consideration of the negligence for which defendant would be liable to the two kinds of negligence alleged.

159 As to the first cause of negligence complained of, the proofs shows you *that* the grade upon which this tank siding was constructed, how it compares with the grade of the main track in the same vicinity, and how it compares with other grades along the defendant's road. No expert testimony has been offered to prove that such grade was dangerous, but plaintiff substantially realies upon facts connected with the use of that side track for many years tending to show that cars have been known to run down on it and threaten obstruction to the main track and make such accident as the one involved in this suit possible. From such proof it is claimed an unskillful construction has been established.

In this connection I say to you that the defendant had a right to build and maintain its side tracks and main track on such grades as would conform to the general lay of the land or country through which it was constructed. It had the right to build these tracks not only to conform to the grade of the lands about them, but also on such grades as were best adapted to the same and prudent conduct of its business. You would not be warranted in assuming that these tracks were unskillfully built and hazardous to the business of

the defendant and the lives of its employees unless there is satisfactory proof to satisfy you of that fact.

The defendant had the lives of passengers and of emyloyees in its keeping. It had valuable engines and cars and other property entrusted to it for transportation, and if no higher motive would
160 actuate it, these selfish interests would naturally induce it to maintain these tracks in a safe condition.

You can also consider in this connection that this side track was used frequently every day for many years, and that, with the exceptions of two occasions to be hereafter referred to, no trouble is shown to have been experienced from the grade of this track. You can also consider in this connection that as an undisputed fact cars at one time, and it is claimed at a second time, moved on this side track either of their own gravity or from some slight disturbing cause, and from these two incidents it is claimed you would be warranted in finding that such side track was dangerous to be used for storing cars or so dangerous as to require precautions to be taken by the defendant to protect its employees from the possibilities of such dangers as cars running out by accident or other cause onto the main track.

These are the facts substantially as claimed by both sides, and from these facts and circumstances before you it will be your duty to find whether or not this side track was so unskillfully constructed as to make it dangerous to employees to use.

If you find from the evidence that the defendant was guilty of negligence in unskillfully building that side track and so maintaining it, you will next consider whether that negligence was the proximate and direct cause of this injury, for if it was not the plaintiff cannot recover, even though the unskillful building of the side track
161 was established. You will then proceed to consider the other acts of negligence complained of.

If you find from the evidence that the defendant's agents placed on that side track a number of gondola cars and left them standing there without properly blocking them by securely tightening a sufficient number of brakes on a sufficient number of cars to hold them to that grade, and that said *said* cars ran down from that side track onto the main track because of such insufficient blocking with brakes, and that said cars were on the main track obstructing it, and while so standing there caused the collision from which plaintiff's intestate received his fatal injuries, and that said intestate was without fault on his part, then the plaintiff is entitled to a verdict.

If you find that the defendant's agents placed a number of cars on the side track in question on that night and left them there with the number of brakes set that usually and ordinarily held that number of cars on this side track, but that the particular siding described before you in this case was so constructed and built as to its grade as to make it unsafe and dangerous to permit cars to remain there even with brakes set, but without a watchman to guard them or without more precautions and safeguards to hold and keep them there than was used on the night of this accident, and that said cars, although held by some set brakes, nevertheless ran down that sid-

ing of their own gravity or motion because of such de-
162 fective construction, then I say to you that the defendant was guilty of negligence, and plaintiff is entitled to recover.

If you find from the testimony that the defendant's servants placed these cars on the tank siding and left them there a reasonable time before the accident with sufficient brakes set to hold them in place, and that said cars were tampered with by some strange person or persons unknown and criminally and maliciously run down onto the main track, and while so there, through the criminal act of such unknown persons, they caused this collision and death, and that defendant had no notice of such criminal acts, and had no reasonable cause to expect or anticipate such a criminal act, then the defendant would not be liable and your verdict should be for the defendant. In this connection it is proper to say to you that in considering this question you may look to the circumstances and facts presented to aid you in deciding whether these cars were run down on that main track by some persons maliciously disposed or whether they ran down there of their own gravity and for want of proper care on the defendant's part. You may find this from the circumstances, if they are satisfactory without the positive evidence of persons who saw the malicious and criminal act done.

And in this connection you should give due weight to the undisputed facts that a short time before the accident Conductor Staeger caused those cars to be run upon this siding and caused brakes to be set upon them, and that said brakes held the cars in that position
for some time and until a very short time before they were
163 found on the main track, and the further fact that after the accident some of the brakes on the cars were found tightly set. These are important facts as bearing upon the claim that the cars could not have run down on said track of their own weight, and should have your careful consideration.

The fact that these cars were upon the main track and caused the injury complained of imposes upon the defendant the necessity of showing that they were not there through any negligence on its part. It is not possible to satisfy you of this from the positive evidence of eye witnesses, because no one has appeared here who claims to have seen them put there or who claims to know from personal knowledge how they got there. But if defendant has shown by those who last saw the cars before the accident and by those who first saw them after the accident such facts as in your judgment are consistent with the theory and lead you to believe the fact to be that the cars were maliciously placed there by persons not in the employ or control of defendant, and you find from such evidence that such claim is a probable and reasonable explanation of their being on the main track, it would be your duty to adopt such a conclusion rather than a contrary opinion, unless such contrary opinion is based on more satisfactory evidence. Negligence must not be presumed, but must be shown either by positive testimony or by circumstances equally satisfactory.

If you find from the evidence that the flat cars which caused
164 the collision by which Teehan was killed were placed upon

the main track in front of his train as the result of the combined negligence of the defendant and a coemployee of the deceased, that then the defendant is liable in this action, and your verdict should be for the plaintiff.

Defendant was in law compelled to apprise its employees of latent or unusual dangers and risks to which they might be exposed, but it was not compelled to notify such employees of ordinary accidents that might happen at all points on its road or of accidents that indicated only possible or remote dangers, unless they were of a character and of such frequency as to make it the duty of the defendant in the exercise of ordinary and reasonable care to believe that it made the risks of its employees hazardous, and, under such circumstances, it would be in duty bound to guard against the repetition of such risks or to notify employees who might be exposed to them of their existence.

Apply this principle to this case, and it is for you, under all the circumstances, to decide whether the moving of cars on this siding, considering the many years of its use, was of such frequency or of such menacing and dangerous character as to make it incumbent in defendant to give notice thereof. If it was but an ordinary incident, liable to happen at such places and unattended with any special significance or danger, a failure to notify plaintiff would not be negligence for which he would be entitled to recover — this case.

The defendant was not obliged to employ a watchman at this tank siding, unless you find from the evidence that the tank
165 siding was so dangerously constructed as to make it necessary on the part of the defendant in the exercise of ordinary care and prudence to have such watchman there to guard the lives of its employees, and the failure to employ a watchman, even under such circumstances, would not make the defendant liable, unless such failure was the proximate cause of the injury complained of.

The defendant was not obliged to use any special kind of switch at that siding. All it was in law bound to do was to use such appliances as were usually employed by railroads of a similar capacity and grade of the defendant about that time.

Following these rules, gentlemen, you will determine from the fair preponderance of all the testimony in the case, as it has been submitted to you, whether or not the plaintiff is entitled to recover, and the weight of the evidence must be a fair preponderance. The evidence need not satisfy you beyond a reasonable doubt, as in a criminal case, but you must be fairly satisfied from the weight of the testimony in the case of the negligence complained of, for which the plaintiff is entitled to recover; and, if you so find, your next duty will be to assess the damages.

If you find the plaintiff's intestate free from such negligence, free from any negligence on his part contributing to the injury, and that the defendant has committed the acts of negligence complained of, under the instructions given you it will be your duty to find
166 a verdict for the plaintiff and assess his damages at a sum not exceeding $10,000. While the amount is within your

control it is to be fixed upon reasonable and just principles. You will take into consideration the circumstances of the intestate as to his age, habits, and capacity to earn wages for the support of his family. Do what you think is fair and just as between the parties under the circumstances in this case. The action is brought under the Ohio statute, and if you return a verdict the damages awarded will be distributed to the beneficiaries under the law of Ohio. You fix a gross sum, whatever you decide upon; you have nothing to do with the distribution thereof.

Take the case, gentlemen, and dispose of it under these instructions.

And thereupon the defendant excepted to the charge of the court as follows:

1. To that part of the charge which reads as follows: "If you find from the evidence that the defendant's agents placed on that side track a number of gondola cars and left them standing there without properly blocking them by securely tightening a sufficient number of brakes on a sufficient number of cars to hold them on that grade, and that said cars ran down from that side track onto the main track because of such insufficient blocking with brakes, and that said cars were on the main track, obstructing it, and while so standing there caused the collision from which plaintiff's
167 intestate received his fatal injuries, and that said intestate was without fault on his part, then the plaintiff is entitled to your verdict."

2. Defendant also excepts to that part of the charge which reads as follows: "If you find that the defendant's agents placed a number of cars on the side track in question on that night and left them there with the number of brakes set that usually and ordinarily held that number of cars on this side track, but that the particular siding described before you in this case was so constructed and built as to its grade as to make it unsafe and dangerous to permit cars to remain there even with brakes set, but without a watchman to guard them or without more precautions and safeguards to hold and keep them there than was used on the night of this accident, and that said cars, although held by some said brakes, nevertheless ran down that siding of their own gravity or motion because of such defective construction, then I say to you that the defendant was guilty of negligence and the plaintiff is entitled to recover."

3rd. To the refusal of the court to give defendant's requests and to giving of the plaintiff's requests.

4th. To that part of the charge relating to the burden of proof as to the position of the cars on the main track being upon the defendant and what was said on that subject.

5th. To that part of the charge relating to notice and what was said on that subject.

6th. To that part of the charge relating to the measure of damages.

168 7th. To that part of the charge relating to the subject of the combined negligence of company and its employees.

8th. To that part of the charge upon the subject of the care required of defendant in respect to latent and unusual accidents.

9th. To the charge as a whole, for the reason that it is misleading.

And the jury having found in favor of the plaintiff, the defendant, within three days, made a motion for a new trial, and by request of trial judge the circuit judge joined in the hearing of the motion to set aside the verdict and for a new trial, and, after argument and consideration, the court, both judges concurring, overruled the same and rendered judgment on the verdict, to which the defendant excepted and tenders this *his* bill of exceptions, which contains all the evidence offered by either party at the trial of said cause, which is allowed, signed, and sealed this 6th day of May, 1890.

AUGUSTUS J. RICKS,
U. S. Dist. Judge, N. D. O.

169 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Bales M. Campbell, administrator of the estate of William Teehen, as plaintiff, and The Pennsylvania Company, as defendant, a manifest error hath happened, to the great damage of the said The Pennsylvania Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8th day of July, in the year of our Lord one thousand eight hundred and ninety.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

MARTIN W. SANDERS,
Clerk of the Circuit Court of the United States for the Northern District of Ohio.

Allowed by—
——.

170 UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

In obedience to the command of the within writ of error I have made diligent search of the records and files in the case therein entitled in said court, and do now herewith return with said writ a full, true, and complete copy of the record and proceedings in the said suit.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

MARTIN W. SANDERS, *Clerk.*

170½ And afterwards, to wit, on July 8th, 1890, a bond was filed in this cause, which is in the words and figures following, to wit:

Know all men by these presents that we, The Pennsylvania Company, as principal, and J. T. Brooks and R. V. Hampson, of Columbiana county, Ohio, as surities, are held and firmly bound unto Bales M. Campbell, administrator of the estate of William Teehan, deceased, in the full and just sum of seventeen thousand dollars ($17,000), to be paid to the said Bales M. Campbell, administrator, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 23rd day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the circuit court of the United States for the northern district of Ohio, eastern division, in a suit depending in said court between Bales M. Campbell, administrator of estate of Wm. Teehan, deceased, and The Pennsylvania Company, a judgment was rendered against the said The Pennsylvania Company in favor of said Bales M. Campbell, administrator, &c., and the said The Pennsylvania Company having obtained and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation to the said Bales M. Campbell, administrator of estate of William Teehan, deceased, citing and admonishing him to be and appear at a Supreme Court
171 of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Pennsylvania Company shall prosecute said proceeding to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE PENNSYLVANIA COMPANY,
By F. W. McCULLOUGH, *Vice-President.*
J. T. BROOKS.
R. V. HAMPSON.

Sealed and delivered in presence of—
Attest: [SEAL.] S. B. LIGGETT, *Secretary.*

Endorsed: Approved. A. J. Ricks, U. S. dist. judge.

172 THE UNITED STATES OF AMERICA:

To Bales M. Campbell, administrator of the estate of William Teehen, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The Pennsylvania Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Augustus J. Ricks, judge of the district court of the United States and one of the judges of the circuit court, this 8th day of July, in the year of our Lord one thousand eight hundred and ninety.

AUGUSTUS J. RICKS,
U. S. Dist. Judge.

173 On this 8th day of July, in the year of our Lord one thousand eight hundred and ninety, personally appeared W. C. Boyle before me, the subscriber, Martin W. Sanders, U. S. commissioner northern district Ohio, and makes oath that he delivered a true copy of the within citation to Thomas W. Sanderson, one of the attorneys of record of the defendant in error herein.

W. C. BOYLE.

Sworn to and subscribed before me this 8th day of July, A. D. 1890.

MARTIN W. SANDERS,
U. S. Com'r, N. D. O.

174 UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } *ss:*

I, Martin W. Sanders, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Bales M. Campbell, administrator of the estate of William Teehan, deceased, is plaintiff and The Pennsylvania Company is the defendant, as the same appears from the files and records of said court now remaining in my custody.